A

DIGEST

OF THE

LAWS of ENGLAND.

By the Right Honourable

Sir JOHN COMYNS, Knight;

Late Lord Chief Baron of His Majesty's Court of Exchequer.

Continued down to the present Time,

By a GENTLEMAN of the INNER TEMPLE.

VOL. II.

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MDCCLXXX.

EXPLANATIONS.

A.

Abr. Ca.	Abridgement of Caſes in Equity.
Acc. or *Ag.* or *Agr.*	Accord, or, Agrees.
Adj.	Adjudged: Sometimes, Adjourned.
Adm.	Admitted.
Ante and *Poſt.*	References to Diviſions and Subdiviſions of the ſame Title.
Arg. 1 *Ch. R.*	Argument in 1 Chancery Reports on the Juriſdiction of the Chancery.
Aſſ.	Liber Aſſiſarum. The Reference by Placita.
Aſt. Ent.	Aſton's Entries.
Ayl. Int.	Ayliffe's Introduction to his Parergon. Edit. 1726.

B

Bend.	Benloe's Reports; Sometimes referred to by *Placitum*, ſometimes by *Page*; when the former it has *pl.* before the Figure.
Bl.	Blount's Law Dictionary.
Bo. R. Act.	Booth of Real Actions.
Br. Jud.	Brownlow's Brevia Judicialia.
Bro.	Brooke's Abridgement.
Bro. Ent. or *Brow. Ent.*	Brown's Entries.
Bro. R.	Brownlow Redivivus.
Bro. V. M.	Brown's Vade Mecum.
Brownl. or 1 & 2 *Brow.*	Brownlow's Reports.
Brownl. Ent.	Brownlow's Entries.
B. R. H.	Caſes in the King's Bench in the Time of Lord *Hardwicke.*
B. M.	*Burrow's* Reports in the Time of Lord *Manſfield.*
B. S. C.	*Burrow's* Settlement Caſes.

C.

Ca. Ch.	Caſes in Chancery. Edit. 1735.
3 *Ca. Ch.*	3d Vol. of Caſes in Chancery, or, Select Caſes in Chancery: Contains the *D. of Norf.* Caſe.
Cal.	Callis on Sewers. 4to. 1686.
Ca. P. or *Ca. Parl.*	Caſes in Parliament.
Cart.	Carter's Reports.
Carth.	Carthew's Reports.

1, 2, & 3 *Ch. R.*	Reports of Cases in Chancery in the Reigns of *K. Charles 1st, &c.* examined with the 3d Edit. *Folio* 1736, by the Pages of the *Octavo* Edit. which are there preserved in the Margin. [Note 1 *Ch. R.* contains the *Earl of Oxford*'s Case, and the *Argument on the Jurisdiction of the Chancery*, which last is described by *Arg.* 1 *Ch. R.*]
Ch. R. without a preceding Figure.	Chancery Reports *tempore* Finch.
Cl. Ass.	Clerk's Assistant.
Clift.	Clift's Entries.
Comp. Att. or *C. Att.*	Compleat Attorney. 1st Edition 1676.
Cont.	Contra.
Crompt. Off. of Sheriff.	Fitzherbert's Offices of Justices of Peace, *&c.* enlarged by Richard Crompton.
C. t. T.	Cases in the Time of Lord *Talbot*.

D.

D.	Dictum.—Sometimes a Letter of Reference to a Book.
D. of Norf.	Duke of Norfolk's Case in 3 Cases in Chancery, or, Select Cases in Chancery.
Dal.	Dallison's Reports.
Dan.	Danvers's Abridgment.
Dub.	Dubitatur.
Dugd. Or. J. or *Jud.*	Dugdale's Origines Juridiciales.
Dugd. Sum.	Dugdale's Summons to Parliament.
Dy.	Dyer's Reports. Edit. 1688.

E.

Eq. Ab. or *Eq. Abr.* or *Eq. Ca. Ab.*	Abridgment of Cases in Equity.
Eq. Ca. or *Eq. R.*	Gilbert's Reports of Cases in Equity, 2d Edition.
Eq. Ca.	Sometimes Gilbert's as above.—Sometimes the Second or Equity Part of 2 *Mod. Ca.* (Modern Cases in Law and Equity;) but when the latter is meant, it is marked in the Margin.
E. of Cov.	Earl of Coventry's Case at the End of Francis's Maxims of Equity.
E. of Oxford.	Earl of Oxford's Case, 1 *Ch. R.*

F.

F. N. B.	Fitzherbert's Natura Brevium. The Pages according to the old Editions.
F,g, or Fitzg.	Fitz-Gibbon's Reports.
Fl.	Fleta.
Finch Ch. R.	Chancery Reports *tempore* Finch.
Fitz.	Fitzherbert's Abridgment.
Fran. or *Fra.*	Francis's Maxims of Equity.
Fra. E. of Cov.	Earl of Coventry's Case at the End of Francis's Maxims of Equity.

G.

G. 2. with a Figure preceding, or, *Temp. G.* 2.	Reports of Cases in Chancery and the King's Bench in the 4th, 5th, 6th and 7th Years of *K. Geo.* 2d.
Godb.	Godbolt's Reports.
Gro. de j. b. & p.	Grotius de Jure Belli & Pacis.

H.

H. P. C. or *H.*	Hale's Pleas of the Crown. 8vo.
Han. Ent.	Hanſard's Entries.
Hanſd. Introd. or *Int.*	Hanſard's Introduction to his Book of Entries.
Hard.	Hardres.

J.

Jan. (*Sr. L.*)	Sir Leoline Jenkins. (The References are to his Argument on the Juriſdiction of the Admiralty, and his Charges at the Admiralty Seſſions.)
Jenk.	Jenkins's Centuries.
Infra and *Supra.*	References to the ſame Diviſion or Subdiviſion.
Jon.	Sir William Jones's Reports
2 *Jon.*	Sir Thomas Jones's Reports.

K.

Kel.	Keilway's Reports.
Kelg.	Kelynge's Reports.
Ken. Imp.	Kennet of Impropriations.
Kit.	Kitchin of Courts. French Edition 1623.

L.

Lut. Ent.	Lutchwyche's Entries.
Lind.	Lyndwood's Provinciale. Edition 1679.
Lit.	Littleton's Reports.
Lit. with *S.*	Littleton's Tenures; *S.* for Section.

M.

Mad.	Madox's Hiſtory of the Exchequer.
Manw.	Manwood's Foreſt Law. 3d Edition.
Mar.	March's Reports. When the Reference is mark't *pl.* it is to the Placita; without that, to the Page.
Mills.	Rules and Orders of *C. B.* by Milles, printed 1732.
Mod. Ca.	6th Modern Reports.
2 *Mod. Ca.*	Modern Caſes in Law and Equity. 1ſt Part.
Mod. Int.	Brown's Modus Intrandi.
2 *Mod. Int.*	Same Book. 2d Part.
Moll. de Jur. M.	Molloy de Jure Maritimo. 3d Edition 1682, or 5th Edition 1701.

O.

Off. Br.	Officina Brevium.
Off. Ex.	Wentworth's Office of an Executor. Edition 1689.

P.

P. W.	Peere Williams's Reports.
Perk.	Perkins's profitable Book treating of the Laws of England.
Pl. or *Pl. Com.*	Plowden's Commentaries.
Poſt and *Ante.*	References to Diviſions and Subdiviſions of the ſame Title.
Pr. Ch.	Precedents in Chancery.
Pr. Lond. or *Priv. Lond.*	Privilegia Londini. 1ſt Edition.
Pr. R. or *Pr. Reg.* or *Sti. Pr. Reg.*	Style's Practical Regiſter. 2d Edition.

Q.

Quo. Warr.	The Caſe of the *Quo Warranto* againſt the City of *London.*

R.

R.	Reſolved.
Raſt. Ent.	Raſtal's Entries.
Reg.	Regiſtrum Brevium.
Reg. Pl.	Regula Placitandi.
Rob. Ent.	Robinſon's Entries.
Rol. with *l.* or a Letter as *A.*	Roll's Abridgment; *l.* for Line; Letter for Diviſion.
Rol. without *l.* or Letter.	Roll's Reports.
Rules and Orders of the Court of Chancery.	Edit. 1739.
Ruſh. or *Ruſhw.*	Ruſhworth's Collections. Edit. 1680.

S.

Sand.	Saunders's Reports.
Seld.	Selden. Edit. 1726.
Seld. J. P.	Selden's Judicature of Parliament.
Seld. Off. Ch. or, *Canc.*	Selden's Diſcourſe on the Office of Chancellor. Edit. 1726.
Seld. Mare Cl.	Selden's Mare Clauſum.
Semb.	Semble; Seems.
Ld. Som. Argt.	Lord Sommers's Argument on the Banker's Caſe.
Spel. Gloſſ. or *Sp. Gloſſ.*	Spelman's Gloſſary. 1ſt Edition 1626.
St. P. C. or *Stamf. P. C.*	Staundford's Pleas of the Crown.
St. Præ. R. or *St. Pr.*	Staundford's Prærogativa Regis.

Sti.	Style's Reports.
Sti. Pr. Reg.	Style's Practical Regiſter. 2d Edition.
Supra and *Infra.*	References to the ſame Diviſion, or Subdiviſion.

T.

Temp. G. 2.	Reports of Caſes in Chancery and the King's Bench in the 4th, 5th, 6th and 7th Years of K. *Geo.* 2d.
Th. D. or *Th. Dig.*	Theloall's Digeſt.
Tho. or *Tho. Ent.*	Thompſon's Entries.
Tot.	Tothills Tranſactions of the High Court of Chancery. Edit. 1671.
Tr. Eq.	Treatiſe of Equity.

V.

Vad. M. or *Bro. V. M.*	Brown's Vade Mecum.
Vid. Ent.	Vidian's Entries.
Vid. Introd.	Vidian's Introduction to his Book of Entries.

W.

W. 1.—*W.* 2.	The Statutes of Weſtminſter 1ſt and 2d.
Wat.	Watſon's Clergyman's Law. 8vo.
Went. Off. Ex.	Wentworth's Office of an Executor. Edition 1689.
Weſt or *Weſt Chan.* or *Weſt Symb.*	Weſt's Symboleography of the Chancery, *&c.*
Winch.	Winch's Reports.
Win. Ent.	Winch's Entries. Edition 1680.

Y.

Year Books.	Compared with the Edition of 1679, 1680.

When the Page of a Book is included in a Parentheſis, thus, (466,) that Page is twice numbered in the Book cited.

Quotations not above ſpecified are ſuch as are conceived to be obvious, and the References are, in general, to the common Editions of the Books.

CALENDAR.

ABBREVIATIONS.

Stud. Rep. Studies Reports.

Syn. and Infr. Synopsis and Index.

T. Ca. t. Reports of Cases in Chancery and the King's Bench in the [illegible] 5th, 6th and 7th Years of K. Geo. 2d.

T. D. or T. Dipl. Talbot's Diploma.

T. Hard. Tidmarsh's Entries.

T. Hutch. Tothill's Translations of the High Court of Chancery.

T. Ray. [illegible]

Ven. M. or Ven. Mar. Vernon's Manuscript.

Ven. Rep. Vernon's Reports.

Vent. Introd. Ventris's Introduction to his Book of Entries.

W.

W. 1.—W. 2. The Statutes of the 1st Chapter 1st and 2d.

W. Wms. Orig. Wentworth's Office of Executor. Edition

W. & M. or W. & M. Chanc. or W. & M. Sess. Statutes of the Chancery, &c.

Wils. Rep. Wilson's Reports.

Winch. Winch's Reports.

Wms. Exec. Williams on Executors. Edition 1780.

Y.

Yelv. Rep. Compared with the Edition of 1675, 1690.

When the Page of a Book is included in a Parenthesis, thus, (465.) that Page is always mentioned in the Book cited.

Quotations not above specified are such as are excepted to be obvious, and the References are, in general, to the common Editions of the Books.

CALENDAR.

Vide Temps, (B. 21.)

CANONS.

(A.) What is the Uſe of the Civil Law.

IN *England* Uſe is ſometimes made of the Civil, and of the Eccleſiaſtical, or Canon Law. *Co. L.* 11. *b.*

Tempore Romanorum, viz. ab anno Chriſti 50, *cum Claudius ſubjugavit Britanniæ partem, uſque annum circiter* 410, *cum Alaricus tempore Honorii Romam cepit, (annos circiter* 360*)* the Civil, or Imperial Law was in Uſe in *Britain. Seld. Diſſ. ad. Fl.* 479, 480.

And afterwards it was uſed, for Direction, where the Law of *England* was ſilent; or for Confirmation, where it was conſonant. *Seld. Diſſ.* 464, 472.

(B. 1.) The Uſe of the Canon Law.

Tempore Regis Stephani Anno Dom. 1150, Decretals were publiſhed for the Government of the Clergy. *Dav.* 70. *a.*

Afterwards the Pope attempted to impoſe Rogations, *viz.* Ordinances for Days of Abſtinence of the Laity, as well as of the Clergy. *Dav.* 70 *a.*

Anno 1230 *tempore Hen.* 3. other Decretals for the Laity, as well as the Clergy, were publiſhed. *Dav.* 70. *a.*

Decretals were firſt introduced in *England, Anno* 25 *Ed.* 1. *Dav.* 71. *b.*

(B. 2.) What ſhall be ſo called.

Jus Canonicum eſt, quod ab Eccleſia, aut Viris Eccleſiaſticis inſtitutum eſt. Lind. 76. *v. Jus Canonicum.*

Theſe were collected in a Book, *viz. Codex Canonum,* which at firſt contained 138 Canons, afterwards 207, made by ſeveral Councils to which afterwards were added 85 Apoſtolical Canons and ſeveral by other Councils, with Canonical Epiſtles by divers Popes. Afterwards the Church of *Rome* made one *Codex Canonum* which contained the Apoſtolical Canons, the Canons of the 12 Councils, and the Decrees of 14 Popes. *Ayl. Int.* 9, 10, *&c.*

The Body of the Canon Law now uſed, being confirmed by Pope *Gregory* 13th, comprehends the *Decretum*, the *Decretals*, the 6th Book of *Decretals*, the *Clementines*, the *Extravagants*, and *Common Decretals*, and the 7th Book of *Decretals. Ayl. Int.* 9. 19. 21. 25. 26, *&c.*

(C.) What Canons bind.

AS to the Power of making Canons, *Vide in Convocation* (E.)

All Canons allowedand uſed in *England*, become Part of the Eccleſiaſtical Laws of *England. Dav.* 70. *b. Vide in Prærogative* (D, 10.)

So, all Canons or Conſtitutions made in a Convocation, or Provincial Synod within the Realm. *Dav.* 72. *b. R. Mo.* 783.

By the St. 25 *H.* 8. 19. Repealed by the St. 1 & 2 *Ph. & M.* 8. and afterwards revived by the St. 1 *Eliz.* M. it was provided, that ſuch Canons, Conſtitutions, Ordinances, and Synodals Provincial already made, which be not contrariant to the Laws, Statutes, and Cuſtoms of the Realm, nor to the Hurt of the King's Prærogative, ſhall be uſed as before the ſaid Act, 'till otherwiſe ordered by 32 Perſons to be appointed according to the ſaid Act.

And by the ſame Statute, the King may nominate and aſſign at his Pleaſure 32 Perſons of his Subjects, 16 of the Clergy and 16 of the Temporalty of Upper and Nether Houſe of Parliament, who ſhall have Power to examine Canons, *&c.* before made, and ſuch as the King and the major Part of them ſhall deem worthy to be continued ſhall be obeyed, ſo that the King's Aſſent under the Great Seal be firſt had to the ſame, and the Reſidue ſhall be void.

And ſuch Nomination was allowed by the St. 27 *H.* 8. 15. the St. 31 *H.* 8. 16. and the St. 3 *Ed.* 6. 11.

But there never was any ſuch Nomination by *H.* 8. or *Ed.* 6. and therefore, all Canons and Conſtitutions here received and allowed before that time, are now the Eccleſiaſtical Laws of the Realm. *Wat.* 22.

And all Perſons are bound by them; for they are Part of the Conſtitution. *Wat.* 23.

And the Common Law Courts will take Notice of them as ſuch. *Wat.* 23.

Canons made 3 *Jac.* by the Convocation with the King's Licence, and confirmed by the King, bind without Confirmation by Parliament. 2 *Vent.* 44.

They bind the Clergy, but not the Laity, unleſs they are confirmed by Parliament. *Carth.* 485.

Yet it was reſolved in the Houſe of Commons 15th *December* 1640. *Nemine contradicente*, That the Convocation, *&c.* hath no Power to make Canons to bind the Clergy, or Laity, without the common Conſent of Parliament. 3 *Ruſh.* 1365.

But a Canon ſhall not be allowed, contrary to the Common Law. 2 *Inſt.* 599. 647. 653. *R.* 12 *Co.* 72. *per Vau.* 2 *Vent.* 44.

Or, contrary to the King's Prærogative, or the Cuſtom of the Realm. 2 *Inſt.* 653. 658. *R.* 12 *Co.* 72.

Or, contrary to an Act of Parliament. 2 *Inſt.* 658. *R.* 12 *Co.* 72.

And therefore, by the St. 25 *H.* 8. 19. it is declared *that a Canon contrary to the King's Prærogative, the Law, Statutes, or Cuſtom of the Realm is of no Force*; and this wes only declaratory of the Common Law. 2 *Inſt.* 658.

So Canons eſtabliſhed in Convocation by the King's Licence, do not bind Lay-Men, but only Eccleſiaſtical Perſons; for the Laity are not repreſented in a Convocation. *Sal.* 412. *D.* that they bind the whole Kingdom, *Mo.* 783. They do not bind the Temporalty. 12 *Co* 73.

So they bind only in Eccleſiaſtical Matters. *Semb. Mo.* 783. 12 *Co.* 73.

So Canons eſtabliſhed, *&c.* do not bind the Laity. *Per Tyrrell*, 2 *Vent.* 43. But *per Vau.* in Eccleſiaſtical Matters they bind Laicks and Eccleſiaſticks, 2 *Vent.* 44.

Lay Perſons are not within the Words of the 62, 101, 102, 103, and 104th. Canons of 1603.

The Canons of 1603, *proprio vigore*, (for ſome are only Declaratory of the Ancient Canon Law) do not bind the Laity. *Per Hardwicke* C. J. *et tot. cur'. on great conſideration. Middleton* v. *Croft*, *M.* 10 *G.* 2. *Str.* 1056. *B. R. H.* 326.

So a Canon that has never been received in *England*, is not Part of the Law Eccleſiaſtical. *Kel.* 181. *b.* 184. *Lat.* 191. 2 *Inſt.* 653.

And by the St. 25 *H.* 8. 21. it is recited, that *England* is free from Subjection to any Man's Laws but ſuch as have been made within the ſame; or by Sufferance of the King, the People by their own Conſent, and long Uſe, have bound themſelves to the Obſervance of, not as to foreign Laws, but as to the ancient Laws of this Realm originally eſtabliſhed within the ſame, by ſuch Sufferance, Conſent, and Cuſtm, and not otherwiſe,

So the Interpretation, Execution, and Diſpenſation of all Canons allowed within *England* belong to the King, and his Miniſters. *Dav.* 70. *b. Vide Prerogative,* (D. 11.)

CAPACITY.

(A) Who have Capacity to Purchaſe.

(A. 1.) Perſons Natural.

PERSONS capable to purchaſe are Natural, or Politick. *Co. L.* 2. *a.*

All Perſons Natural have a Capacity to take by Purchaſe.

Perſons Deformed, if they have human Shape. *Co. L.* 3. *b.*

A Deaf, Dumb, and Blind Perſon. *Co. L.* 3. *b.*

An Ideot, or a Man of non-ſane Memory may purchaſe, without the Conſent of any other. *Co. L.* 2. *b.* 3. *b.*

And he himſelf can never avoid the Purchaſe. *Co. L.* 2. *b.*

So, if he recover his Sanity and afterwards agree to the Purchaſe, his Heir ſhall never avoid it. *Co. L.* 2. *b.*

But if he dies in his Inſanity, or recovers, and dies before Agreement to the Purchaſe, his Heir may agree to, or waive the Eſtate, without cauſe alledged *Co. L.* 2. *b.*

A Leper may purchaſe, *Co. L.* 3. *b.*

So, an Hermaphrodite, according to the prevailing Sex. *Co. L.* 3. *a.*

A Baſtard, by his Name of Reputation. *Co. L.* 3. *b.*---*Vide Baſtard* (E.)

A Man convicted, or attained of Treaſon, or Felony may purchaſe for the Benefit of the King. *Co. L.* 2. *b.*

So a *Feme Covert* may take by Purchaſe, till her Huſband diſagree, or ſhe after her Huſband's Death waive it. *Vide Baron and Feme,* (P. 2.---R.)

So a Villein may purchaſe, but the Lord afterwards may enter. *Co L.* 2. *b.*

So an Alien may purchaſe for the Benefit of the King, or an Houſe for his Habitation. *Co. L.* 2. *b. Vide in Alien,* (C. 2, 3.)

So an Infant may purchaſe without the Conſent of another; for it ſhall be intended for his Benefit. *Co L.* 2. *b.*

But after his full Age, he may agree to it, or waive it at his Pleaſure. *Co. L.* 2. *b.*

And if he die before Agreement, after his full Age, his Heir may agree to, or waive it. *Co. L.* 2. *b.*

So now, a Monk, Nun, *&c.* may purchaſe; for they were not diſabled by the Common Law, and the Canon Law, whereby their Diſability incurs, is here aboliſhed. 1 *Sal.* 162.

(A. 2.) Politick.

A Body Politick is Sole, or Aggregate. *Co L.* 2. *a. Vide Franchiſes,* (F. 1, &c.)

A Corporation Aggregate conſiſts of many Perſons, all capable of purchaſing, or one capable and the others incapable. *Co. L.* 2. *a.*

A Corporation Sole, as the King, a Biſhop, a Parſon, *&c.* may purchaſe, to him and his Succeſſors. *Co. L.* 250. *a.*

So, a Corporation Aggregate, where all are capable; as a Mayor and Commonalty. *Vide Co. L.* 250. *a.*

Dean and Chapter.

So, where one is capable, and others incapable; as, an Abbot may purchaſe without the Conſent of the Convent, and cannot afterwards avoid it. *Co. L.* 2. *b.*

But

But his Succeſſor for good Cauſe, and not otherwiſe, may waive the Purchaſe. *Co. L.* 2. *b.*

As, if the Rent reſerved exceed the Value of the Eſtate. *Co. L.* 21 *b.*

(B. 1.) Who not.

BUT a Monſter, who has not an human Form cannot purchaſe. *Co. L.* 3. *b.*

Nor a Man profeſſed in Religion, for he is dead in Law; as a Monk, Fryer, Nun, *&c.* except when they are Sovereigns of an Houſe of Religion. *Co. L.* 3. *b.* 132. *b.*

So a Community not incorporated cannot purchaſe; as, the Pariſhioners, or Inhabitants of *D. Co. L.* 3. *a.*

The Commoners in ſuch a Waſt, cannot take by Grant of the Lord. *Co. L.* 3. *a.*

So Churchwardens cannot purchaſe Lands, (but Goods only.) *Co. L.* 3. *a.*

(B.) By the Statute of *Mortmain.*

(B. 2) What is *Mortmain.*

By the St. 7 *Ed.* 1. *de Religioſis. Si quis Religioſus, vel alius,* (for *Magna Charta,* 9 *H.* 3. 36. extends only to a Religious Houſe which purchaſes, 2 *Inſt.* 75.) purchaſe Lands or Tenements in Fee, the Lord of whom the Lands are holden may enter within a Year; or, if he be negligent, the next Lord within half a Year; or if he neglect, the King may enter.

So by the St. *W.* 2. 13 *Ed.* 1. 32. If he obtain a Recovery by Colluſion. 2 *Inſt.* 429.

And by the St. *W.* 15 *R.* 2. 5. If there be a Feoffment to the Uſe of ſuch an one.

And theſe Statutes extend to every Corporation Sole, or Aggregate, Eccleſiaſtical, or Temporal. *Co. L.* 2. *b.* 2 *Inſt.* 75.

If Lands are granted to them upon an Exchange. *Kit.* 39. *b. F. N. B.* 223. *E. F.*

If an Advowſon be appropriated to them. *F. N. B.* 223. *H. Kit.* 39. *a.*

Or, a Rent-Charge granted. *F. N. B.* 223. *B. Kit.* 38. *b.* 139. *b.*

So, if Lands are deviſed to them. *F. N. B.* 224. *F.*

So, if a Biſhop enter upon Land purchaſed by his Villein, it is *Mortmain. F. N. B.* 224. *b. Kit.* 38. *b.*

If a Biſhop or other Corporation alien to another and his Succeſſors. *F. N. B.* 222. *D. Kit.* 38. *b.*

By the S. 23 *H.* 8. 10. Feoffments, Fines, Wills, *&c.* to the Uſe of the Pariſh Church, Chapel, Guilds, Commonalties, *&c.* or to find Obits, Prieſts, *&c.* which are to have Continuance above 20 Years, ſhall be void.

If there be an Alienation in *Mortmain* of Things not held, as of a Villein, Rent-Charge, Common, Advowſon *&c.* the King ſhall have them preſently. *Co. L.* 2. *b.*

If a Man by Will gives 500*l.* out of his perſonal Eſtate to Truſtees in truſt, to lay out part in building a School-Houſe, and School Maſter's Houſe, and directs that *the Purchaſe of the Ground,* and the Expence of Building ſhall not exceed 200*l.* and the remaining 300*l.* to be laid out in Land or *real Security,* for the Maſter's Maintainance; the laſt is void by *ſtat.* 9 *G.* 2. *c.* 36. and ground may not be purchaſed with the 200*l.* but if the Pariſh has Lands, it may be laid out in building on them. *Attorney-General* v. *Bowles T.* 1754. 3 *Atkyns* 806. 2 *Vezey* 547.

If a man gives a Legacy to his Executors, and then deviſes a Copyhold to *A.* he paying his Executors 1000*l.* and gives the Reſidue of his Eſtate to a Charity, this 1000*l.* is a Charge on real Eſtate, and the Deviſe of it void by the Statute. *Arnold* v. *Chapman, T.* 1748. 1 *Vezey* 108.

If a Man gives his real Eſtate to Truſtees to ſell, and with the Produce and his perſonal Eſtate to pay Debts and Legacies, and *(inter alia)* to purchaſe Freehold Land for a Fund for an Annuity to preach a Sermon, to keep a Tombſtone in Repair

Repair, and for Management of this; it is within 9 G. 2. and void. *Durour* v. *Motteux*, *M.* 1749. 1 *Vezey* 320.

If mortgagee, in poſſeſſion under *habere facias*, deviſes all Money due on the Mortgage to a Charity; though the Heir at Law of Mortgagor inſiſts to redeem, yet it is within 9 *Geo.* 2. *Attorney-General* v. *Meyrick*, *M.* 1750. 2 *Vezey* 44.

(B. 3.) What is not mortmain.

But if an Annuity be granted to a Corporation, it is not *Mortmain*; for that charges the Perſon only. *Co. L.* 2. *b.*

So, if Goods and Chattels are granted. *Kit.* 139. *b.*

So, a Grant of a Diſtreſs in other Lands for an antient Rent. 2, *F. N. B.* 224. *G. Kit.* 39. *b.*

A Releaſe of Rent to the Tenant, *Kit.* 39. *a.*

Recovery in Value upon *Voucher*. *Kit.* 39. *b.*

So, the King by his Licenſe may diſpenſe with an Alienation in *Mortmain*; *Kit.* 39. *b.*

And before ſuch Licenſe an *Ad quod damnum* antiently iſſued; but it is not now uſed. *F. N. B.* 222. *D. Vide St.* 27. *Ed.* 1.

But ſuch Licence does not bind the other Lords. *Vide F. N. B.* 222. *D. Kit.* 139. *a*, *b.*

And therefore, it was enacted by the St. 7 & 8 *W.* 3. 37. That the King may licenſe to alien, or take in *Mortmain*.

So a Deviſe to a Charitable Uſe within the St. 43 *Eliz.* is not *Mortmain*.

Tho' the Deviſe be to a College. *R.* 1 *Lev.* 284.

[If *A.* by his will before 9 *G.* 2. *c.* 36. deviſes Lands to Truſtees for a Charity, and by Codicil made after the Act deviſes the ſame and other Land to the ſame and other Truſtees, on the ſame Truſts; makes Alterations in other Parts of his Will, and confirms the Reſt; the Lands deviſed by the Will are not within the Statute. *Willet* v. *Sandford*, *M.* 1748. 1 *Vezey* 178, 186.]

[If a Man deviſes the Reſidue of his real and perſonal Eſtates to *A.* for Life, *&c.* and then to Truſtees to erect an Hoſpital; as to his real Eſtate it is void, but not as to the perſonal; tho' he had Mortgages, and *erect* means to *found*, as well as to *build*. *Vaughan* v. *Farrer*, *H.* 1750. 2 *Vezey* 182.]

(B. 4.) By What Names they ſhall purchaſe.

(B. 4.) Perſons Natural

A Man regularly ought to purchaſe by his Name of Baptiſm, and his Surname. *Co. L.* 3. *a.*

But if he purchaſe by his Name of Confirmation, it is ſufficient. *Co. L.* 3. *a.* and that ought to be uſed. 1 *Brownl.* 47.

So, if there be a certain Deſcription of the Perſon who purchaſes, altho' his Chriſtian and Surname are omitted, it is ſufficient. *Co. L.* 3. *a.*

As if a Grant be *to the Earl of Pembroke*, *the Biſhop of London*, &c. by his Name of Dignity; for the Perſon is certain. *Co. L.* 3. *a.*

To the Cheſter Herald, &c. *R.* 2 *Rol.* 44. *l.* 15.

To the Wife of B. Co. L. 3. *a.*

Primo aut ſecundo filio, Seniori Puero, natu minimo, omnibus Filiis, Filiabus, Liberis, Exitibus, aut rectis Hæredibus de B. Co. L. 3. *a.* *R. Mo.* 104.

And *Primo Puero*, may be to the firſt Child tho' it be a Female, if it be ſo explained by any other Writing. *R. Mo.* 104.

If it be, *to the Iſſue Male*, his firſt Iſſue Male ſhall take. *R.* 3 *Lev.* 433.

So, tho' his Chriſtian Name be added, and miſtaken. *Co. L.* 3. *a.*

So, if there be a Limitation *to the Heir Male of the Body of his Grandfather*, the Heir Male ſhall take, though there be an Heir General alive; for the Deſcription is ſufficient to make him take by Deſcent, and therefore it ſhall be well by Purchaſe. *R.* 2 *Ver.* 730.

But, if there be a Deſcription of a Perſon certain *in eſſe*, and there is no ſuch one *in Rerum Natura*, a Perſon who afterwards anſwers to the Deſcription cannot take; as, if a Remainder be limited *to B. the Wife of A. though A.* afterwards marry *B.* before the particular Eſtate ends, ſhe cannot take. *Mo.* 104.

Vide Fait, (E. 3.)

(B. 5.) Politick.

So a Corporation, regularly, ought to purchaſe by its Name of Incorporation; and therefore, a Grant by or to *the Maſter and Wardens of Cooks in London*, whereas they are named *Maſters and Governors*, will be void. *R. Pl. Com.* 537. *b.*

The Maſter of St. Peter's, where the Name is, *The Maſter of St. Peter's and St. Paul's. Bro. Corporation* 8.

The Provoſt, &c. of the Houſe of N. where it is a Chauntry. *Bro. Corporation* 21, 22.

The Dean and Chapter Cathedralis Eccleſiæ Sanctæ & individuæ Trinitatis N. omitting, *ex Fundatione Reg. Ed.* 6. *Adm.* 3 *Co.* 75. 2 *And.* 166, 167. *Jon.* 170.

Collegium Regale de Eton, where the Name is, *Collegium beatæ Mariæ de Eton. Dy.* 150. *d.* 1 *And.* 23. *Mo.* 13.

The Dean and Canons liberæ Capellæ de W. where the Name is, *The Dean and Canons Capellæ St. Geo. Martyr de W.* 1 *Leo.* 162.

The Maſter Collegii de Merton in Oxonia, where the Name is, *Collegium Scholarium de M. in Univerſitate Oxoniæ.* 1 *Leo.* 162. *Cont. Mo.* 266.

The Preſbiters and Chaplains of St. Stephens, where the Name is, *The Dean, Canons, and Vicars of St. Stephens.* 2 *And.* 166,

The Provoſt and Scholars of Queen's College in the Univerſity of Oxford, where the Name is, *The Provoſt and Scholars Aulæ Reginæ de Oxford. Dub. Lane* 15. 33.

Yet an Addition to a Name does not avoid the Purchaſe, but ſhall be rejected: As, if *the Maſter and Brethren* are named, *The Maſter and Brethren ſive Socii. R.* 11 *Co.* 20. *a. Bro. Corporation* 8. 62.

If the Maſter, &c. of the Miſtery of Cooks, are named, *of the Craft and Miſtery. Pl. Com.* 537. *b.*

If the Hoſpital *H.* 7. *Regis Angliæ* be named, *The Hoſpital H.* 7. *nuper Regis.* 1. *R. Leo.* 159.

If *Collegium Chriſti in Oxonia* be named *Collegium Chriſti in Academia Oxoniæ R. Mo.* 361. *Vide Mo.* 865. *Sav.* 129. *R. Poph.* 56.

If any Ornament to a Name be added, or omitted. *Poph.* 156, 7.

Nor an immaterial Variation; as a Leaſe by *the Dean and Chapter of Exeter*, inſtead of, *in Exeter. R.* 2. *Leo.* 97. 2 *Rol.* 42. *l.* 45.

By *the Maſter Domus ſive Collegii*, inſtead of, *Domus ſive Hoſpitalis*; for a College and Hoſpital are the ſame. *Semb.* 1 *Leo.* 215.

Collegii Trinitatis, inſtead of, *Collegii Sanctæ & individuæ Trinitatis.* 1 *Leo.* 161.

The Dean and Chapter Eccleſiæ de Peterborough, inſtead of, *Eccleſiæ Petriburgenſis.* 1 *Leo.* 159. *Cont.* 1 *And.* 23.

Magiſter Collegii, inſtead of Magiſter Aulæ, &c. R. 11 *Co.* 22. *b.*

Magiſter Hoſpitalis H. 7. *de Savoy & Cappellanus prædicti Hoſpitalis*, inſtead of, *Magiſter & Capellanus Hoſpitalis H.* 7. *de Savoy. R.* 1 *Leo.* 159. *Acc. Dy.* 278. *Mo.* 865.

The Miniſter of God of the Poor Houſe of D. inſtead of, *The Miniſter of the Poor's Houſe of God of D. Dub.* 2 *And.* 117. *R. Mo.* 865.

Major & Ballivi Villæ de D. & Burgenſes ejuſdem Villaa, where the Name is, *Major & Burgenſes Villæ de D. R.* 1. *Rol.* 119.

The Dean and Chapter Eccleſiæ Petriburgenſis, inſtead of, *Sancti Petriburgenſis. Mo.* 14. *Cont.* 1 *And.* 23.

So if a Statute, or Teſtament give a certain Deſcription it is ſufficient, tho' the Name be not obſerved: As, if Advowſons of Recuſants are given *to the Univerſity of Cambridge. R.* 10 *Co.* 57. *b.* 11 *Co.* 21. *b.* 2 *Leo.* 165.

So in Grants and Conveyances, it is ſufficient, if the ſame Name *in Re & Senſu* be uſed, tho' not *in verbis. R.* 10 *Co.* 124.

So by a Verdict, or an Averment, a Miſnomer may be aided. 10 *Co.* 125. *b.*

So, if an ancient Corporation be incorporated *de novo*, with an Addition to the Name; a Leaſe, &c. by the ancient Name will be good. *R. Jon.* 167.

(C.) Who have Capacity to Grant.

EVERY Perſon being a natural and lawful Subject, of ſane Memory, and full Age, may make a Feoffment, Grant, Leaſe, *&c.* *Co. L.* 42 *b.* *Vide Grant*, (A. 1.)

Tho' he be a Baſtard. *Co. L.* 42. *b.*

Convict of Hereſy. *Co. L.* 42. *b.*

A Leper removed by the King's Writ *à Societate Hominum.* *Co. L.* 42. *b.*

Tho' he be deaf, dumb, or blind, if he has good Sanity, and Diſcretion. *Co. L.* 42. *b.*

(D.) Who not.

(D. 1.) A Man profeſſed.

BUT a Perſon profeſſed in Religion, (who is *civiliter mortuus*,) as a Monk, Fryar, Canon, *&c.* cannot make a Grant; for his Grant ſhall be void.

Yet the Sovereign of an Houſe of Religion, as an Abbot, Prior, *&c.* may make a Grant, *&c.* *Vide Co. L.* 132. *b.*

So may a Monk, Fryar, *&c.* in the Name, and by the Aſſent of his Sovereign.

Or, as a Farmer of the King, in reſpect of his Farm. *Vide Co. L.* 132. *b.* *Vide Abatement*, (E. 5.)

(D. 2.) A Feme Covert.

So a Grant by a *Feme Covert*, without the Aſſent of her Huſband, will be void. *Vide Baron and Feme*, (Q.)

Yet a Fine, or Common Recovery of her own Land, will be good, 'till it be avoided by her Huſband. *Vide Baron and Feme*, (P. 1.)

So, a Grant *en autre Droit*, as Executrix. *Vide Baron and Feme*, (P. 3.)

So, if a Woman make a Grant when Sole, and deliver the Deed as an Eſcrow, to be her Deed upon Conditions performed, and before the Conditions performed ſhe takes Huſband, and then the Conditions are performed, it will be good; for after Performance it has Relation to the Delivery. *Per. Grant* 9.

So, if a *Feme Covert* deliver a Deed when Covert, and after the Death of her Huſband deliver it *de novo*; it ſhall be good by the ſecond Delivery; for the firſt Delivery was intirely void. 2 *Rol.* 26. *l.* 3.

Vide Fait, (A. 3.—B. 5.)

(D. 3.) An Infant.

So a Grant by an Infant by Deed will be void, if it ſeems to his Prejudice. *Vide Infant*, (C. 2.)

So, if the Grant takes Effect by Livery from his Hand, or ſeems to his Advantage, yet it is voidable, and may be avoided by him or his Heirs. *Vide Enfant.* (C. 3, *&c.*)

(D. 4.) A Man Inſenſible.

So a Man, who has no Underſtanding, as if he be Dumb, Deaf, and Blind from his Birth, has not a Capacity to grant, but his Grant will be void. *Per. Grant.* 25.

(D. 5.) A

(D. 5.) A Man Non-ſane.

So a Man of non-ſane Memory, has not a Capacity to make a Grant, that ſhall bind his Heir, or any other, beſides himſelf. *Vide Ideot*, (C.—D. 1, &c.

And therefore if an Idiot, Lunatick, &c. make a Feoffment, Grant, or Gift, &c. his Heir ſhall avoid it. *Vide Per. Grant.* 21.

So if he make a Feoffment with a Letter of Attorney to make Livery when Non-ſane, and afterwards he comes to a good Memory, and then Livery is made without any other Aſſent; his Heir ſhall avoid it. *Per. Grant.* 23

But a Man Non-ſane cannot avoid his Grant, &c. during his Life; for he cannot diſable himſelf. *Per. Grant* 21.

So if the Grant be by Matter of Record, as, by Fine, &c. his Heir ſhall not avoid it. *Per. Grant.* 24.

(D. 6.) Attainted.

So a Perſon attainted of Treaſon or Felony has not a Capacity to make a Grant, that ſhall bind the King, or the Lord of whom the Lands are held. *Vide Per. Grant.* 26.

But a Grant by a Perſon attainted binds himſelf and his Heirs. *Vide Per. Grant.* 26.

(D. 7.) Head of a Corporation.

So the Head of a Corporation Aggregate has not a Capacity to bind the Corporation by his Grant, without Aſſent of the Community under the Common Seal: As if a Mayor make a Feoffment, or Grant of Land, or a Grant of a Rent, &c. out of Land, without Aſſent of the Commonalty under the Common Seal, it will be void. *Vide Per. Grant.* 31.

So the Maſter of an Hoſpital, or College, without Aſſent of the Brethren. *Vide Per. Grant.* 31.

So a Grant by the Head of a Corporation Sole binds only himſelf, but not his Succeſſor: As, a Grant by an Abbot, Prior, &c. without Aſſent of the Convent. *Vide Per. Grant.* 31.

By a Biſhop without Aſſent of the Dean and Chapter.

By a Dean, without the Aſſent of the Chapter. *Vide Per. Grant* 31, 32.

Who may Sue, and be Sued, and Who not,

Vide Action, (B. 1, &c.—C. 1, &c.)—*Abatement*, (E. 1, &c.—F. 1, &c.

Who may Deviſe, and take by Deviſe, and Who not,

Vide Deviſe, (G.—H. 1, &c.—I.—K.)

Who may marry, and who not,

Vide Baron and Feme, (B. 1, &c.)

CAPE.

Grand Cape. *Vide Proceſs*, (D. 4.)

Petit Cape. *Vide Proceſs*, (D. 5.)

CAPIAS.

Vide Pleader, (2. W. 3)

Ca-

Capias ad Satisfaciendum.

Vide Execution, (C. 9, &c.)—*Bail*, (R. 4.)

Capias pro Fine.

Vide Execution, (B. 1, 2.)

Capias si Laicus.

Vide Statute Staple, (D. 4.)

Capias Utlagatum.

Vide Pleader, (2 W. 6.)—*Utlagary—Wales*, (B. 2.)

Testatum Capias.

Vide Proces, (E. 7.)

CAPIATUR.

Vide Leet, (O. 7, 8.)

CARRIER.

Vide Action upon the Case for Negligence, (C. 1. &c.)

CASE.

Vide Action upon the Case.

CASTLE.

(A) Castle-guard.

AID for the Keeping of a Castle continues, tho' the Castle be destroyed. R. *Mo.* 1.

CASU PROVISO.

Writ of Entry in Casu Proviso.

Vide Dum fuit infra Ætatem, (D.)

CASU CONSIMILI.

Writ of Entry in Consimili Casu.

Vide Dum fuit infra Ætatem, (E.)

CASUAL PROFITS.

Vide Prærogative, (D. 49, 50.)

CATHEDRAL.

Vide Cemetery, (A. 3.)—*Eſgliſe*, (B.)

CATTLE.

Vide Diſmes, (H 5, &c.)

CAUSE OF ACTION.

Vide Abatement, (G. 4, &c.—H. 24.)—*Action*, (E.—F.—G.—I.)

CAUTION.

Vide Admiralty, (E. 19.)---*Bail*, (D.)

CEMETERY

(A. 1.) Church-Yard.

THE Church-Yard is, *Totus Fundus, qui infra Clauſuram ipſius continetur. Lind.* 267. *v. Cæmeteriis.*

The Church-Yard, *circa Eccleſiam majorem* 40 *Paſſus continere debet, circa minorem* 30 *Paſſus. Lind.* 253. *ver. Clauſ. Cæmet.*

(A. 2.) To whom the Profits belong.

The Soil and Profits of the Church and Church-Yard, belong to the Parſon. *Vide Eſgliſe*, (G. 1.)

Or, to the Vicar. *Vide Eccleſiaſtical Perſons*, (C. 14.)

And the Parſon may make a Leaſe of the Church-Yard.

If he leaſe his Parſonage, the Church and Church-Yard paſs.

If any cut Corn or Trees there growing, Treſpaſs lies by the Parſon, or his Leſſee.

By Uſage in *London*, the Churchwardens take the Money for burying in the Church or Church-Yard, and the Parſon has nothing but in the Chancel. 2 *Sho.* 184.

So the Incloſure of the Church-Yard belongs to the Pariſhioners. *Vide Prohibition*, (G. 3.)

(A. 3.) What Priviledges belong to the Church-Yard.

Cæmeterium gaudet eadem Privilegio, quo Eccleſia. Lind. 256. *v. Cæmeterio.* 270.

And therefore, before Sanctuary was taken away, Churches and Church-Yards had the Priviledge of Sanctuary. *Vide St.* 32 *H.* 8. 12.

By the St. of *Wint.* 13 *Ed.* 1, 6. Fairs and Markets ſhall not be kept in Church-Yards for the Honour of the Church.

By a Conſtitution at *Oxford Anno* *Lind.* 270. *Judicium ſanguinis, (i. e. Cauſa per Judices ſæculares de Effuſione ſanguinis, aut Corporali Pœnâ) ne tractetur in Eccleſia, aut Cœmeterio.*

So by the 88*th* Canon, *Anno* 1603. The Church Wardens and their Aſſiſtants ſhall ſuffer no Plays, Feaſts, Banquets, Drinkings, Temporal Courts, or Leets, Lay-Juries, Muſters, or other profane Uſage in the Church or Church-Yard.

So by the St. 5 *Ed.* 6. 4. If any by Words only quarrel, chide, or brawl in the Church or Church-Yard, the Ordinary on Proof by two Witneſſes may ſuſpend him, if Lay, *ab Ingreſſu Eccleſiæ*, if Clerk, *ab Officio*, as long as he thinks meet.

If any ſmite, or lay violent Hands on another, he ſhall be *ipſo facto* excommunicate.

If any maliciouſly ſtrike with a Weapon, or draw a Weapon to ſtrike in the Church or Church-Yard, and be convicted by Verdict, Confeſſion, or two Witneſſes before the Juſtices of Aſſiſe, *Oyer and Terminer*, or the Peace, he ſhall loſe one of his Ears, or if none, be ſtigmatized on the Cheek with an hot Iron with the Letter *F*. and beſides ſtand *ipſo facto* excommunicate.

The Eccleſiaſtical Court has Juriſdiction to give Sentence of Excommunication and there muſt be a Sentence declaratory at leaſt, for ſtriking in a Church-Yard. *Bilſon* v. *Chapman*, *H.* 9. *G.* 2. *B. R. H.* 190.

And this may be done without any prior Conviction. *Ibid.*

Unleſs on the third Clauſe of ſtriking with, or drawing a Weapon, and there a temporal Puniſhment (the Loſs of an Ear) being inflicted, and the Excommunication an accumulated Puniſhment, a prior Sentence is requiſite. *Ibid.*

Cathedral Churches are within this Statute, and Church-Yards which belong to them. *R. Cro. El.* 224. 1 *Leo.* 248.

So it ſhall be within the Statute, if any ſmite or draw a Weapon to ſmite, *&c.* in his own Defence. *Vide Noy* 171.

But the Indictment muſt ſay, *quod malitioſe percuſſit*, or *extraxit cum Intentione ad percutiendum*. *R. Noy* 171, 2.

So he ſhall not be excommunicated, 'till the Conviction tranſmitted to the Ordinary, and Seetence upon it, tho' the Statute ſays, he ſhall be *ipſo facto* excommunicated. *Dub. Dy.* 275, *b.* *But acc. in Marg. R. Cro. El.* 919.

'Till the Conviction tranſmitted, but that is ſufficient without Sentence upon it. *R.* 1 *Vent.* 146.

(B.) Burial.

In What Place it ſhall be.

BURIAL was the uſual Character of a Parochial Church. *Seld. de Dec. c.* 9. *ſect.* 4. *Vide Eſgliſe*, (C.)

And therefore, every Perſon, (who may have Chriſtian Burial,) may have Burial in the Church-Yard where he dies, by the general Cuſtom of *England*.

And that, without any Fee for breaking up the Soil. *R.* 1 *Sal.* 334.

Tho' the Church-Yard be in a City, where anciently no Burial was allowed without the King's Licence.

So by the Canon, *Ne cui pro Pecunia denegetur ſepultura, ſed ſi quid devotione fidelium conſuetum fuerit erogari, volumus per ordinarium loci Eccleſiis Juſtitiam fieri.* *Lind.* 278, 279.

And therefore, *in Eccleſia vel Cœmeterio, pro ſepulturâ nihil exigi debet, nec pro Officio ſupulturæ.* *Lind.* 278.

So, tho' by the Canon, *Laicus non ſepeliatur in Eccleſia, niſi in Cœmeterio*;

Yet by the Cuſtom of *England*, every one, (who ſhall have Chriſtian Burial,) may have Burial in the common Part of the Church, or Chancel, paying the uſual Fee to the Parſon for breaking up the Soil. *Vide Eſgliſe*, (G. 1.)

The uſual Fee is 3*s.* 4*d.* in the Church: 6*s.* 8*d.* in the Chancel.

Or, by Cuſtom, it may be more. 1 *Sal.* 334. 2 *Keb.* 778. 3 *Keb.* 523

So,

So, by Cuſtom the Fee ſhall be paid to the Churchwardens, tho' of Common Right it belongs to the Parſon.

So a Man may preſcribe, that he is Tenant of an ancient Meſſuage, and ought to have ſeparate Burial in ſuch a Vault within the Church.

Or, in ſuch an Iſle, or the Quire.

And if he be diſturbed, he may have an Action upon the Caſe. 2. *Cro.* 606.

But a Cuſtom, that every Pariſhioner has a Right to bury his dead Relations in the Church-Yard, as near to their Anceſtors as poſſible, is bad. *Fryer* v. *Johnſon, M.* 29 *G.* 2. 2 *Wilſ.* 28.

So, tho' by the Canon, a Man ſhall be intombed, *ubi decimas perſolvebat vivus*;

Yet he may by his Will appoint his Burial at ſuch a Monaſtery, *&c.* as he pleaſes *Seld. de Dec. c.* 9. *ſect.* 4.

And if the Burial be out of the Pariſh where he died, the Parſon of the Pariſh where he died cannot preſcribe for a Fee for his Funeral, unleſs he was a Pariſhioner there. *R. Hob.* 175.

So altho' he was a Pariſhioner; for he ought not to have a Fee, where nothing is done. *Semb. Sal.* 332.

But by the Canon a *Felo de ſe* ſhall not have Burial in the Church, or Church Yard, without a Licence from the Biſhop or Ordinary.

Nor, a Man excommunicated.

(C.) Tomb, Monument, &c.

SO an Heir, or Executor may erect, or ſet up a Tomb-ſtone, or other Monument in a convenient Place within the Church or Church-Yard, for the Honour of his Anceſtor there buried.

And, if any one pull down or deface ſuch Tomb-ſtone or Monument, the Heir may have an Action for it. *Co. L.* 18. *b.*

So, if any deface the Arms, Pennons, *&c.* put up in a Window, or elſewhere, in Honour of his Anceſtor. *Co. L.* 18. *b.*

Tho' they are defaced by the Parſon, Ordinary or Churchwardens, as well as by a Stranger. *R.* 2. *Cro.* 367.

So the Wife or Executors, who ſet them up, may have an Action for defacing them in their Time. *Co. L.* 18. *b.*

But a Monument, Tomb, *&c.* cannot be erected to the Hindrance of Divine Service. 3 *Inſt.* 202.

CENSURES.

Eccleſiaſtical Cenſures.

Vide Prærogative, (D. 12.)

CERTAINTY.

Vide Abatement, (H. 5.)—*Action upon the Caſe upon Aſſumpſit*, (A. 3. &c.—H. 3.)—*Action upon the Caſe upon Trover*, (G. 2, &c.—*Appeal*, (G. 6.)—*Arbitrament*, (E. 11.)—*Copyhold*, (S. 19.)—*Grant*, (E. 14.—G. 5, 6.)—*Indictment*, G. 1, &c.) *Information*, (D. 2.)—*Mandamus*, (D. 5.)—*Obligation*, (B. 2.)—*Pleader*, (C. 17, &c. 48.—E. 5, &c.—F. 17.—S. 21, 41, 42.—2 W. 7.—2 Z. 1.—3 M. 5.)—*Præſcription*, (E. 3.)—*Rent*, (B. 7.)—*Retorn*, (E. 1, 2.)

CERTI-

CERTIFICATE.

(A.) Trial by Certificate of the Biſhop.

(A. 1.) When it ſhall be.

IF there be Iſſue upon general Baſtardy, it ſhall be tried by the Certificate of the Biſhop, *Vide in Baſtard*, (D. 2.)

So, if the Iſſue be, *an unques accouple en loyal Matrimony*. 2 *Rol.* 584. *l.* 52. *Vide in Pleader*, (2 Y. 10.)

If the Iſſue be, *whether there was a Divorce*. 2 *Rol.* 585. *l.* 47.

Whether there was Bigamy. 2 *Rol.* 587. *l.* 7.

Whether a Man was profeſſed in Religion. 2 *Rol.* 584. *l.* 12. 586. *l.* 51.

So, *whether he was profeſſed of ſuch an Order*. 2 *Rol.* 584. *l.* 10. 586. *l.* 53.

So, where the Iſſue is, *whether a Prior was Dative, or Perpetual*. 2 *Rol.* 587. *l.* 10. 584. *l.* 20.

So, where the Iſſue is, *whether a Clerk were inſtituted, or not*, it ſhall be tried by the Ordinary. 2 *Rol.* 584. *l.* 3. *Dy.* 78. *b.*

So, *full or not full*; for the Church is full by Inſtitution. 2 *Rol.* 583. *l.* 52.

So an Iſſue *whether a Clerk was able or not*, when the Clerk is alive. 2 *Rol.* 583. *l.* 40.

Whether a Clerk reſigned, or was deprived. 2 *Rol.* 583. *l.* 45, 6.

Whether a Church be void by Deprivation, 2 *Rol.* 583. *l.* 45.

Whether a Biſhop be conſecrated, or not. 2 *Rol.* 588. *l.* 30.

Tho' the Iſſue be upon the Time of the Conſecration. 2 *Rol.* 588. *l.* 35.

So, if the Iſſue be, *whether the Dean or another is Guardian of the Spiritualties* 2 *Rol.* 588. *l.* 26.

Whether a Clerk was infra ſacros Ordines. *Adm.* 2 *Lev.* 250.

Or was ſo at the Time of his Inſtitution; for the Time here refers to the Inſtitution, which ſhall be tried by the Ordinary. *Semb.* 2 *Lev.* 250.

So an Iſſue, *whether excommunicated or not*, ſhall be tried by the Ordinary. *Co. L.* 134. *a.*

Whether an Executor refuſed to make Probate of a Will. *Semb.* 1. *Leo.* 205.

So by the St. 1 *Jac.* 4. *Whether a Recuſant conformed*. *Hard.* 62.

(A. 2.) When not.

But if a Matter of Spiritual Cognizance is not directly in Iſſue, it ſhall be tried by the Country: As, where Baſtardy is not directly in Iſſue. *Vide Baſtard.* (D. 2.)

If the Iſſue be, *Wife or not Wife, eſpouſed or not*, &c. 2 *Roll.* 585. *l.* 10. 17. *Sho.* 50. *Sti.* 10. 1 *Leo.* 53.

Whether Feme Sole, or Covert. 2 *Rol.* 585. *l.* 7, 12, 15, 20.

Whether A. *be her Huſband, or not*. 2 *Rol.* 585. *l.* 21.

If the Iſſue be, *that ſhe was married before her Age of Conſent to B. and afterwards to the Demandant, and ſo his Wife, and not the Wife of B.* 2 *Rol.* 585. *l.* 25.

So, *Marriage or not*; for the Marriage in Fact, and not the Legality of the Marriage, is in Queſtion. R. 2 *Rol.* 585. *l.* 50. 2 *Cro.* 102.

So in a Perſonal Action, if the Iſſue be, *whether lawfully married*; for the Marriage is the Subſtance of the Iſſue, and *lawfully* ought not to have been added. *R.* 1 *Lev.* 41.

So, if a Matter of Spiritual Cognizance concerns Perſons dead, or Strangers to the Action: As, if the Baſtardy of *B.* be alledged, who is dead or a Stranger. *Vide Baſtard*, (D 2.)

So, if *ne unques accouple*, Profeſſion &c. be alledged between Strangers. 2 *Rol.* 584. *l.* 15. 585. *l.* 37, 40.

If a Clerk be dead, when the Iſſue is, *whether he was able, or not.* 2 *Rol.* 583. *l.* 42.

So, if a Matter of Spiritual Cognizance is coupled and entangled with a Matter of Temporal Cognizance, it ſhall be tried by the Country: As *Special Baſtardy. Vide in Baſtard,* (D. 2.)

Marriage within Age of Conſent, and afterwards a Diſſent, and ſo not his Wife, ſhall be tried by the Country. 2 *Rol.* 585. *l.* 25.

So by the St. 12 *Car.* 2. 33. Baſtardy, or Marriage according to an Ordinance of Parliament after 1 *May,* 1642, before 1660.

So, if the Iſſue be, *Prior or not Prior,* it ſhall be tried by the Country. 2 *Rol.* 584. *l.* 21.

Avoidance of a Church, &c. *by being a Biſhop in Ireland. Pal.* 459.

So, *Parſon or not,* upon ſpecial Matter. 2 *Rol.* 585. *l.* 30.

So, *infra ſacros Ordines,* where it relates to Avoidance of a Church by the Act of Uniformity, *D.* 2 *Lev.* 250.

So, if there be Iſſue upon Inſtitution and Induction. 2 *Rol.* 584. *l.* 7. 585. *l.* 20.

Whether a Church be void or not. 2 *Rol.* 584. *l.* 1. 588. *l.* 32.

Whether void by Reſignation. 2 *Rol.* 583. *l.* 47.

If Iſſue be, *whether excommunicated after a Prohibition,* it ſhall be tried by the Country. 2 *Rol.* 585. *l.* 45.

Whether profeſſed before a Feoffment; for the Queſtion is upon the Time. 2 *Rol.* 588. *l.* 20.

So in the Caſe of Infancy, a Matter of Spiritual Cognizance ſhall be tried by the Country: As, Baſtardy alledged in him. 2 *Rol.* 586. *l.* 40. *Vide Baſtard,* (D. 2.)

A Divorce for Præ-contract of his Father and Mother, in an Aſſiſe by him. 2 *Rol.* 586. *l.* 37.

So, where it is pleaded only in Abatement. *Vide in Baſtard,* (D. 2.)

As, if Profeſſion, or Coverture be pleaded in Abatement. 2 *Rol.* 588. *S.*

So, where a Matter of Spiritual Cognizance comes in Queſtion in a collateral Action. 2 *Rol.* 585. *l.* 40, 50. 586. *l.* 25. *Hob.* 179. *Vide ſupra,* where it is not directly in Iſſue.

So if the Biſhop return, *that the Party is exempted out of his Juriſdiction,* it ſhall be tried by the Country; as, Profeſſion, where the Biſhop returns, *that he is exempted.* 2 *Rol.* 587. *l.* 2.

So, if the Power of the Biſhop to make a Certificate be taken away by Act of Parliament. *Semb. Hard.* 65.

(A. 3.) By whom the Certificate ſhall be.

(A. 3.) If the Biſhop be a Party.

So, if the Biſhop be a Party to the Suit, the Trial ſhall not be by his Certificate: As, in a Real Action againſt a Biſhop, if he plead, *that the Demandant is a Baſtard,* it ſhall not be tried by himſelf, but by the Metropolitan. 2 *Rol.* 587. *l.* 45.

So in a *Quare Impedit,* where the Biſhop appears to be the Diſturber; if the Iſſue be triable by the Ordinary, a Writ goes to the Metropolitan. *Dyer* 353. *b.*

As, if a Biſhop alledge Refuſal, becauſe the Clerk was *inhabilis.* 2 *Rol.* 587. *l.* 25. *Dyer* 327. *b.*

So, if the Iſſue be, *whether the Biſhop be conſecrated,* it ſhall be tried by the Metropolitan. 2 *Rol.* 590. *l.* 10.

So, if the Archbiſhop of *York* be Party, it ſhall be by the Archbiſhop of *Canterbury.* 2 *Rol.* 589. *l.* 30, 40. *Dy.* 328. *a.*

But if the Biſhop is not the Diſturber, a Writ to certify may be directed to him: As in a *Quare Impedit,* where the Biſhop claims nothing, but as Ordinary. 2 *Rol.* 587. *l.* 30.

Yet, if the Biſhop is a Party, tho' he is not the Diſturber, the Writ may be to him, or to the Metropolitan at Election. *R.* 2 *Rol.* 587. *l.* 40. 1 *Rol.* 364. 398.

So if he be the Diſturber, the Writ may be to him, at the Election of the Party. *Semb.* 1 *Rol.* 364. 397.

If there ſhould be a Writ to the Metropolitan, and the See become void, the Certificate ſhall be by the Guardian of the Spiritualties. 2 *Rol.* 587. l. 50. (A. 4.) If the See be vacant.

And the Writ ſhall be, to the Guardian of the Spiritualties, *Sede vacante.* 2 *Rol.* 589. *l.* 3, 5. *Dy.* 77. *a.*

And if any one by Compoſition be Guardian of the Spiritualties, it ſhall be directed to him. 2 *Rol.* 588. *l.* 53.

So in the Vacancy of a Biſhoprick, it ſhall be directed to the Guardian of the Spiritualties of the Biſhop. 2 *Rol.* 590. *l.* 25. *Dy.* 350. *a.*

Tho' the See of the Biſhop, or Archbiſhop, become vacant after Iſſue, or Judgment, and before the Writ awarded. 2 *Rol.* 590. *l.* 30.

So, by Cuſtom, the Writ ſhall be to the Archdeacon of *Cheſter*, as immediate Ordinary, for all Things within the County of *Cheſter*. 2 *Rol.* 588. *l.* 45.

And to the Archdeacon of *Richmond*, for all Things within 2 *Rol.* 588. *l.* 48.

So Excommunication may be certified by the Delegates. 2 *Rol.* 590. *l.* 15. *R. Dy.* 371. *b.*

But, generally, the Writ ſhall be directed to the Biſhop, tho' he be abſent out of the Realm. 2 *Rol.* 589. *l.* 10.

Tho' his Vicar in his Abſence refuſe the Writ. 2 *Rol.* 589. *l.* 15.

Tho' the Temporalties are ſeized into the King's Hands. 2 *Rol.* 590. *l.* 20.

Tho' the Biſhop be only elected, and not conſecrated. 2 *Rol.* 590. *l.* 5.

Yet, if the King by his Writ certify the Abſence of the Biſhop, before the Writ awarded, or before the Return of it, the Writ ſhall be directed to the Biſhop, or his Vicar-General. 2 *Rol.* 589. *l.* 20, 25.

If the Writ be directed to the Guardian of the Spiritualties, and before Execution a Biſhop is created, there ſhall be a new Writ to him. 2 *Rol.* 590. *l.* 35. *Dy.* 350. *a.*

(A. 5.) Upon what Foundation, and at what Time.

None can write to the Biſhop to make a Certificate, except the King's Courts. *Co. L.* 134. *a.* 2 *Rol.* 589. *l.* 50.

As, *B. R.* or *C. B. Co. L.* 134. *a.* 2 *Rol.* 589. *l.* 50.

The Juſtices of Goal Delivery. *Co. L.* 134. *a.* 2 *Rol.* 589. *l.* 50.

But the Courts of *London*, *Norwich*, *York*, &c. cannot write to the Ordinary. 2 *Rol.* 589. *l.* 50.

And therefore, if a Plea be there of a Matter triable by the Certificate of the Ordinary, after Iſſue joined, there ſhall be a *Mittimus* to remove it in *B.* &c. and after a Writ to the Biſhop, and a Certificate upon it, there ſhall be a *Procedendo.* 2 *Rol.* 589. *l.* 50.

A Certificate by the Biſhop of Baſtardy, &c. is of no Avail, except upon the King's Writ to him directed.

And the Writ ſhall always be to the Biſhop, not to his Commiſſary, &c. *R.* 1 *Leo.* 205.

If there be a Writ to the Biſhop to certify Baſtardy, &c. and afterwards the Aſſiſe diſcontinues by the Juſtices not coming, and a Re-attachment is ſued, the Biſhop may afterwards make a Certificate without a new Writ. 2 *Rol.* 590. *l.* 50.

(A. 6.) How it ſhall be made.

The Certificate of the Ordinary muſt be poſitive, and expreſs. *Vide Baſtard*, (D. 2.)—*Pleader*, (2 Y. 10.)

The Certificate of the Biſhop ſhall be concluſive; for no Averment lies againſt it. *R.* 1 *Leo.* 205.

But

But an Action upon the Case lies for a false Certificate, as for a false Return. *Semb.* 1 *Leo.* 205.

Vide Excomengement, (B. 2, &c.)

(B) Trial by Certificate of the Recorder of London.

IF Issue be joined, *whether there be such a Custom of London*, it shall be tried by the Mayor and Aldermen, by the Mouth of the Recorder. 2 *Rol.* 579. *l.* 10. 580. *l.* 5. *to* 25, 35, 40. 2 *Inst.* 126. Confirmed by Charter 2 *Ed.* 4.

And the Recorder may make his Certificate *ore tenus*. *Cro. Car.* 361. 516.

Tho' the Custom to be tried does not concern Lands, or a Devise of them, but a collateral Thing. *R.* 2 *Rol.* 579. *l.* 35. *Cro. Car.* 517. *Jon.* 412.

Tho' it be in an Action by *Qui tam*, &c. which concerns the King. *R.* 2 *Rol.* 579. *l.* 30.

And upon such Issue, there shall be a Surmise by the Plaintiff, that it ought to be certified by the Recorder. 2 *Rol.* 581. *l.* 5. *Cro. Car.* 516.

But if there be a Custom for the Profit of the City, it shall be tried by the Country, and not by the Mouth of the Recorder: As, whether there be a Custom, *that every Freeman shall be quit of Payment*, &c. *R.* 2 *Rol.* 579. *l.* 15. *Hob.* 86.

That such a Thing shall be forfeited to the Mayor, Citizens, and Commonalty, &c. *R.* 2 *Rol.* 581. *l.* 10.

So if the Custom is not directly in Issue, it shall be tried by the Country: As, if a Custom be alledged *for a Market in London every Day in the Week*, &c. and the Issue is, *that there is no such Market*. *R.* 2 *Rol.* 580. *l.* 30. *Hob.* 87.

(C) Trial by Certificate of the Marshal, &c.

IF upon a *Distringas* for Escuage, the Issue be, *whether the Tenant was in Scotland with the King for* 40 *Days*, it shall be tried by the Certificate of the Marshal of the King's Host under his Seal. 2 *Rol.* 583. *l.* 30. *Lit. Sect.* 102.

So, if Issue be, *whether a Man outlawed was in Prison at* Bourdeaux *at the Time of the Outlawry*, it shall be tried by the Certificate of the Mayor of *Bourdeaux*. *Co. Lit.* 74. *a.*

Certificate of Assise.

Vide Assise, (B. 27, 28.)

Bankrupt's Certificate.

Vide Bankrupt, (D. 37.)

Vide Enquest, (A. 2, 3.)—*Statute Staple*, (D. 2.)

CERTIORARI.

(A. 1.) When it lies.

THE Writ of *Certiorari*, is an Original Writ issuing out of the *Chancery*, or *B. R.* when the King would be certified of any Record in any other Court of Record. *F. N. B.* 245. *A.*

Or the King may command the Tenor of the Record, at his Election. *F. N. B.* 245. *B.*

So, if *Nul tiel Record* be pleaded in *C. B.* the Court may award a *Certiorari*. 1 *Rol.* 394. *l.* 15. *Hob.* 135. *R. Cro. Car.* 297.

[If a *Certiorari* iſſues to uſe the Record as Evidence, then the Tenor, if returned, is ſufficient, and countervails the Plea of *Nul tiel Record*; but if the Record is to be proceeded upon, the Record itſelf muſt be removed, and this, whether it is before Judgment or after; and in this Caſe, the Writ muſt be ſuperſeded, and not quaſhed, which can only be done on a View of the Record itſelf. *Woodcroft* v. *Kinaſton*, *T.* 1742. 2 *Atkyns* 317.]

And therefore, the King may command the Juſtices of *C. B.* to certify him of any Record before them in his *Chancery*. *F. N. B.* 244.

Or, to ſend all Records depending in *C. B.* before the Juſtices in *Eyre* to be determined by them. *F. N. B.* 243. *K.*

And if the Juſtices in *Eyre* cannot determine during their Stay in the ſame County, they ſhall be removed by *Certiorari* into *C. B.* again. *F. N. B.* 243. *K.*

So a *Certiorari* lies to the Chief Juſtice of *B. R.* to certify a Condemnation there for the King's Fine, or other Record, to the Intent to have a Pardon, *&c.* *F. N. B.* 245. *G.* 246. *C.*

So there may be a *Certiorari* to Juſtices of Aſſiſe, to certify a Record before them into *Chancery*. *F. N. B.* 244. *C.*

Or, to remove all Proceedings before them, before the new Juſtices of Aſſiſe. *F. N. B.* 242. *D.* 243. *C. D.*

Or, before other Juſtices, to the Intent to have an Attaint. *F. N. B.* 242. *E.*

[*Certiorari* to the Juſtices of Aſſiſe, ſhall be granted to the Crown or Proſecutor, without ſpecial Reaſon alledged; *ſecus* to the Defendant. *Garland* v. *Barton*, *M.* 11 *G.* 2. *Andr.* 27.

It lies to remove an Information before Juſtices of Aſſiſe, againſt a Parſon for Non-reſidence, for they have no Juriſdiction in the Cauſe. *Ibid.*]

So, to Juſtices in *Eyre* to remove a Record, or Proceedings before them. *F. N. B.* 242. *E.* 243. *K.* 1 *Sid.* 296.

So, if a Record be removed into the *Exchequer*, there may be a *Certiorari* to the Treaſurer and Chamberlains of the *Exchequer*. *F. N. B.* 242. *F. G.* 243. *A.* 246. *O.*

So a *Certiorari* lies to the Treaſurer and Barons to certify the Debt of *B.* or his Anceſtor to the King, without ſaying, into *B. R.* or into *Chancery*. *F. N. B.* 246. *G.*

So a *Certiorari* lies to the Juſtices of Goal-Delivery. *F. N. B.* 246. *A. H.*

So a *Certiorari* lies to the Juſtices of *Oyer* and *Terminer* to certify a Record into *B. R.* in order to have Execution upon it. *F. N. B.* 246. *B.*

So, after Conviction, in order to have Judgment. 1 *Sal.* 149. *Mod. Ca.* 17.

To the Mayor and Sheriffs of *London*, to remove a Record before them to be determined in *B. R.* *F. N. B.* 245. *E.* 246. *L.*

To the Steward and Marſhal of the King's Houſe. *F. N. B.* 246. *F. K.*

To Juſtices of Peace, to remove an Indictment before them. *Mod. Ca.* 17.

[To remove an Indictment, for not doing Statute-Labour in the Highway. *Rex* v. *Eachard*, 12 *G.* *Rex* v. *Greenhaw*, *M.* 3 *G.* 2. *Str.* 849.

To remove an Indictment at Seſſions againſt private Perſons, for not repairing a Bridge. *Rex* v. *Hamworth*, *P.* 4 *G.* 2. *Str.* 900.

To the Quarter Seſſions of a Corporation to remove an Indictment, on Affidavit that Defendant could not have a fair Trial. *Rex* v. *Fawle*, *M.* 13 *G.* *Ld. Raym.* 1452.]

Or, to them, to remove an Outlawry, and Proceſs tranſmitted to them. *F. N. B.* 246. *I.*

So it lies to Juſtices of Peace, to remove any Order made by them. *R.* 3 *Mod.* 95.

To the Seſſions, to remove an Order of two Juſtices. *Rex* v. *Warminſter*, *M.* 8 *G.* *Str.* 470.

To remove Order of Juſtices before Appeal, where only one Party has a Right to appeal, for he may wave it; or where no Time is limited for appealing, for then a *Certiorari* might never lie; but where two Parties have a Right to

appeal, and the Time of appealing is fixed, there it ſhall not be granted till after Appeal, or after the Time for it. *Rex* v. *Harman*, *H.* 12 *G.* *Andr.* 343.

One *Certiorari* lies to remove ſeveral Orders and Convictions, if they relate to the ſame Perſons and the ſame Matter: *Ibid.*

It lies to remove Orders of Conviction on the Conventicle Act, 22 *C.* 2. *c.* 1. after appeal to Quarter Seſſions, Trial, Verdict and Judgment; for the Juriſdiction of *B. R.* is not taken away without expreſs Words. *Rex* v. *Moreley*, *T.* 33 & 34 *G.* 2. 2 *B. M.* 1040.

To remove Order of Quarter Seſſions, on Appeal from a Scavenger's Rate, altho' 2 *W. & M. ſt.* 2. *c.* 8. ſays their Order ſhall be final without any Appeal to any Court. *Rex* v. *St. Andrew's Holbourn*, *H.* 4 *G.* 3. 3 *B. M.* 1458.]

Or, to a particular Juſtice of Peace, for a Conviction, or Order by him.

[But by 13 *G.* 2. *c.* 18. *ſſ.* 5. no *Certiorari* ſhall iſſue to remove any Proceedings before Juſtices or Quarter Seſſions, unleſs applied for within ſix Calendar Months, and Proof on Oath of ſix Days Notice in Writing to the Juſtice, or two of them, if ſo many.

Certiorari to remove Order of Baſtardy, ſhall not be granted, if not applied for in ſix Months, tho' it was made before *ſtat.* 13 *G.* 2. *Rex* v. *Howlett*, *M.* 17 *G.* 2. *Wilſ.* 35.]

So, to Commiſſioners of Sewers, for all Orders or Proceedings before them. *F. N. B.* 247. *A.* 1 *Sal.* 145. *Vide Sewers*, (I. 1.)

[To Commiſſioners of Sewers, for their Order to remove their Clerk, it is of common Right; but in other Caſes, where Danger of Inundation may be, it is diſcretionary. *Commiſſioners of Sewers in Yorkſhire*, *M.* 11 *G.* *Str.* 609.

On the Clerk of Commiſſioners of Sewers being removed, and another appointed, *B. R.* will not, on the Rule to ſhew Cauſe, ſuffer them to make out their Titles by Affidavits, but will grant *Certiorari*. *Rex* v. *Banks*, *M.* 11 *G.* *Fort.* 374.]

To a Biſhop to certify Admiſſion, Inſtitution, and Induction to a Church. *F. N. B.* 246. *M.*

To an Eſcheator. *F. N. B.* 247. *H.*

To the *Cuſtos Brevium* of *C. B.* to certify a Writ Original, or Judicial. *F. N. B.* 246. *N.*

To the Mayor of the Staple, to certify a Statute before him. *F. N. B.* 244. *D.* *Vide Statute Staple*, (D. 2.)

To a Sheriff, for the Record of a *Re-diſſeiſin*, or *Poſt Diſſeiſin* before him. *F. N. B.* 242. *B.*

And that, to the Intent to have Execution out of *B. R.* *F. N. B.* 242. *B.*

[It lies to remove Inquiſition taken by the Sheriff under a private Act of Parliament, and the Verdict and Judgment thereon. *Rex* v. *Mayor of Liverpool*, *T.* 8 *G.* 3. 4 *B. M.* 2244.]

To Sheriffs and Coroners, to certify an Outlawry in the County. *F. N. B.* 245. *G.*

So it lies to the Mayor, Bailiffs, or other Judge of a Court in a City or Town, to remove a Record into *B. R.* to have Execution there. *F. N. B.* 243. *B.*

So, to the Cenſors of the College of Phyſicians, to remove a Judgment by them for male Practice. *R.* 1 *Sal.* 144.

So, to every inferior Juriſdiction of Record. 1 *Sal.* 144.

Tho' it be within a County Palatine, or in *Wales*, &c. *R.* 1 *Sal.* 146. 148. *R.* 2 *Rol.* 29. *Vide Franchiſes*, (D. 1, &c.)

[To remove Indictment from Quarter Seſſions in *Wales*, without ſtopping at the Grand Seſſions. *Rex* v. *Lewis*, *T.* 9 *G.* 3. 4 *B. M.* 2456.]

[To the Grand Seſſions in *Wales*, on an Indictment for Miſdemeanor. *Rex* v. *Lewis*, *T.* 12 *G.* *Str.* 704. *B. R. H.* 163.]

Or, the *Cinque Ports*. 2 *Lev.* 86. *Vide Franchiſes*, (E. 1, &c.)

Vide Pleader, (3 K. 7.)

[The King's Attorney General has a Right to demand it, when the Right of the Crown is concerned; even to move it on the Part of the Defendant. *R.* v. *Tindal*, *P.* 27 *G.* 2. *R.* v. *Burgeſs*, *P.* 27 *G.* 2.

But where there is a private Proſecutor, it is diſcretionary, yet 'tis of Courſe for Proſecutor; but Defendant muſt ſhew ſpecial Ground, or to obtain *Procedendo*. *Ibid.* *Rex* v. *Lewis*, *T.* 9 *G.* 3. 4 *B. M.* 2456.]

(A. 2.) When a *Mittimus* thereupon.

After a Record removed by *Certiorari* to the *Chancery* out of *C. B.* or other Court, it may by *Mittimus* be tranſmitted to *B. R. F. N. B.* 244. *A. B.*

Or, when removed by *Certiorari* from the Juſtices of Aſſiſe, or other Juſtices to the *Chancery*, it may be tranſmitted to *C. B. F. N. B.* 244. *C.*

So a Record, removed by *Certiorari* to another Court, or Juſtices, may afterwards be tranſmitted to *B. R.* or other Juſtices at the King's Election. *F. N. B.* 245. *F.*

Or, it may be removed by *Certiorari* to *B. R.* immediately, without a *Mittimus*. *R.* 1 *Lev.* 312.

But if there be a material Variance between the *Certiorari* and the Order, *&c.* the Record ſhall not be removed thereby: As, if there be a *Certiorari* for an Order concerning *foreign Salt*, and the Order is for *Salt*, generally. *R.* 1 *Sal.* 145.

If it be for an Indictment only, and the Indictment and Conviction alſo are returned. 1 *Sal.* 150.

If the Indictment be after the *Certiorari* granted. 1 *Sid.* 317.

If a Record be removed by *Certiorari* after Conviction in another Court, the Party muſt waive the Iſſue, and it ſhall be tried *de novo*; otherwiſe *B. R.* will not give Judgment upon a Conviction in another Court. *R. Carth.* 6.

[The Recognizance of a Receiver of an Infant's Eſtate in *Ireland*, cannot be tranſmitted to the *Exchequer* in *Ireland* by *Mittimus*, but a Bill muſt be filed there, and the Certificate of the Recognizance here will be Evidence. *Lord Caſtlecomer* v. *Lady Caſtlecomer*, *H.* 1727. *Bunb.* 249.]

(B) How a Certiorari ſhall be proſecuted.

[THE Affidavits for a *Certiorari* ſhall be intitled by the Name of the Cauſe in the Court below. *Rex* v. *Lewis*, *T.* 12 *G. Str.* 704.]

By the St. 1 & 2 *Ph. & M.* 13. A *Certiorari* to remove a Priſoner out of Gaol, or a Recognizance ſhall be ſigned by the Chief Juſtice, or in his Abſence by the other Juſtices of the Court whence it iſſues, on Pain of 5*l.* againſt the Proſecutor.

By the St. 5 & 6 *W. & M.* 11. No *Certiorari* ſhall be granted to remove an Indictment for a Treſpaſs, or a Miſdemeanor from the Quarter Seſſions in Term, but on a Rule in *B. R.* on Motion of Counſel in open Court, nor in Vacation, but on Allowance of a Judge, who ſhall indorſe his Name, and the Name of him who demands it.

In Vacation there muſt be a *Fiat* ſigned by a Judge for a *Certiorari* for Orders of Juſtices. 1 *Sal.* 150.

And the *Fiat* and the Writ alſo muſt be ſigned by a Judge in a *Certiorari* for an Indictment. 1 *Sal.* 150.

And a *Fiat* after the *Eſſoin* Day of the Term, for a *Certiorari*, which was teſted in the preceding Term, will be irregular. *R.* 1 *Sal.* 150.

So by the St. 21 *Jac.* 8. A *Certiorari* to remove an Indictment of Riot, forcible Entry, or Aſſault and Battery from the Quarter Seſſions, ſhall be delivered in open Court, and not allowed unleſs the Indictee be bound in Sureties in 10*l.* to the Proſecutor, to pay Coſts, which the Juſtices in the Quarter-Seſſions ſhall aſſeſs, within a Month after Conviction.

So by the St. 13 & 14 *Car.* 2. 6. It ſhall not be allowed to remove Proceedings about Highways, unleſs bound, *&c.* in 40*l.* to pay Coſts to be aſcertained upon Oath.

[*Certiorari pro Rege* lies in caſe of Highways, tho' no Affidavit nor Recognizance; for the St. 13 & 14 *C.* 2. *c.* 6. 3 *W. & M.* and 5 *W. & M. c.* 11. relate only to *Certiorari's* applied for by Defendants. *Rex* v. *Farewell*, *P.* 17 *G.* 2. *Str.* 1209.]

Nor,

Nor, by the St. 5 & 6 *W. & M.* 11. To remove an Indictment for a Treſpaſs or Miſdemeanor before Trial, unleſs bound, &c. in a Recognizance of 20*l.* before Juſtices of Peace (or by the St. 8 & 9 *W.* 3. 33. before a Judge of *B. R.*) to appear, plead, and try it the next Aſſiſes, or if in *London* or *Middleſex*, the next Term, or Sitting after Term.

And if he be convicted, *B. R.* ſhall give Coſts, and upon Oath of Refuſal for ten Days after Demand, ſend an Attachment.

[The Stat. 5 & 6 *W. & M. c.* 11. as to Defendant's paying Coſts to Proſecutor, extends only to Officers and Perſons really injured; therefore Defendant indicted for an *Attempt* to commit Felony, where no Damage is done to the Proſecutor, ſhall not pay Coſts. *Rex* v. *Ingleton*, *M.* 10 *G.* 2. *Wilſ.* 139.

But it is ſufficient if Proſecutor is *proved* to be a Civil Officer (as by *Affidavit*) tho' it is not inſerted on the Indictment. *Rex* v. *Smith*, *Mich.* 30 *G.* 2. 1 *B. M.* 54.

If, on removing Indictment from Seſſions of *Oyer* and *Terminer*, Defendant enters into Recognizance of 500*l.* to plead, go to Trial, and appear on the Return of the Verdict, this is not a Recognizance on Stat. 5 & 6 *W. & M. c.* 11. but at Common Law, and Defendant ſhall not pay Coſts. *Rex* v. *Sidney*, *P.* 15 *G.* 2. *Str.* 1165. *Rex* v. *Fonſeca*, *M.* 30 *G.* 2. 1 *B. M.* 10.]

And if Bail be not found before a Judge ſince the St. 8 & 9 *W.* 3. 33. a *Certiorari* ought not to be allowed. 1 *Sal.* 149.

So by the St. 3 & 4 *W. & M.* 10. *ſ.* 6. There ſhall be no *Certiorari* to remove a Conviction or Proceeding on that Act, againſt deſtroying Deer, unleſs bound by Recognizance with Sureties, as the Juſtices of Peace before whom he is convicted ſhall approve, in 50*l.* conditioned to pay the Proſecutor his full Coſts, to be aſcertained by Oath.

So by Rule in *B. R. Mich.* 3 *W. & M.* On a *Certiorari* to remove any Indictment, or Preſentment from any County or Corporation, except *London* or *Middleſex*, the Proſecutor at the Return ſhall procure two Men to give a Recognizance before a Judge of the Court to plead, and if Iſſue be joined, to try it on Notice to the Proſecutor or his Clerk at the next Aſſiſes, and in Default thereof, before the End of the Term a *Procedendo* ſhall go. *Sho.* 336.

So by the St. 5 *G.* 15. No *Certiorari* ſhall be to remove a Conviction for Deer-ſtealing, till Security to pay the Forfeiture as well as Coſts, and render the Party to Juſtice in a Month after the Conviction confirmed.

But a Recognizance is not forfeited for not trying, unleſs the Proſecutor gives a Rule for it. 1 *Sal.* 370.

If the Sureties are worth as much as the Statute requires, the Juſtices of Peace cannot refuſe them as inſufficient. *R. Mar.* 27.

If a Recognizance be given upon a *Certiorari* for Coſts; the Proſecutor ſhall have only Coſts upon the Writ, and after it. *R.* 1 *Sal.* 55.

[On *Certiorari* to remove Indictment for Perjury, if Defendant makes up the Record, carries it down to Sittings, with a *Diſtringas*, and Attorney-General's Warrant for a *Tales*, there being ſpecial Jury, and Eleven only appear, and the Warrant is given Proſecutor's Counſel, and they will not pray a *Tales*, and Defendant does not, and Cauſe is made a *Remanet pro defectu Jurator*, Defendant ſhall not pay Coſts. *Rex* v. *Lowfield*, *T.* 5 & 6 *G.* 2. *Str.* 937.

If Proſecutor has obtained a third Part of the Fine, it ſhall be deducted out of the Coſts taxed on the Recognizance. *R.* v. *Oſborne*, *T.* 7 *G.* 3. 4 *B. M.* 2125.]

And the Proſecutor, after the Coſts paid, ought not to move for an Aggravation of the Fine. *R.* 1 *Sal.* 55.

[On Indictment on 5 *Eliz. c.* 4. for exerciſing a Trade, &c. removed by Defendant after Conviction, he may, on Motion, pay the Penalty without Coſts, and have his Recognizance diſcharged. *Rex* v. *Strong*, *M.* 31 *G.* 2. 1 *B. M.* 431.

If *A.* convicts *B.* on the Game Laws before a Juſtice, and he pays the Penalty, and then *A.* brings Action for the ſame Offence, the Juſtice refuſes Copy of Conviction, and *B.* brings *Certiorari* merely to have the Conviction to plead; *A.* gets it affirmed, and then becomes non-ſuited in the Action: the

Court

Court will not give Coſts on the *Certiorari*, but order the Bond to be delivered up. *Rex* v. *Midlam*, *T.* 5 *G.* 3. 3 *B. M.* 1720.]

If a Recognizance be taken for 40*l.* not for 20*l.* as a Statute ſpeaks, it will be a good Recognizance, tho' no *Superſedeas*. *R. Sal.* 564.

If he, who ſues a *Certiorari*, does not appear in Court within the Term, when the Writ is returned, he ſhall forfeit his Recognizance. *Mod. Ca.* 220.

If, upon a *Certiorari*, the Party gives a Recognizance, and does not proſecute with Effect, *viz.* does not quaſh or traverſe the Indictment, an Attachment lies againſt him. *R. Mar. Pl.* 118.

[If Defendant, convicted on Penal Statute, brings *Certiorari*, and dies before Argument, the Court will go on. *Rex* v. *Roberts*, *T.* 5 & 6 *G.* 2. *Str.* 937.

If no Proceedings in two or three Terms, Order ſhall be affirmed. *Rex* v. *Oulton*, *H.* 9 *G.* 2. *B. R. H.* 206.

If Defendant has paid Coſts for not going on to Trial, Proſecutor ſhall not quaſh, but on Payment of Coſts. *Rex* v. *Moore*, *H.* 6 *G.* 2. *Str.* 946.

If the Proſecutor enlarges the Rule to ſhew Cauſe why an Order ſhould not be quaſhed, he ſhall not afterwards object to the iſſuing the *Certiorari*. *Rex* v. *Hartſhorn*, *H.* 32 *G.* 2. 2 *B. M.* 745.

Proceedings being removed from inferior Court of Record, where Parties were at Iſſue, Plaintiff muſt declare *de novo*. *Barnes* 345.]

(C) How it ſhall be returned.

A *Certiorari* ſhall be returned by the Juſtices, to whom it is directed, with the Record, *&c.* annexed, not by the Clerk of the Peace. *R. Sal.* 479.

By a Rule in *B. R. Mich.* 3 *W. & M.* It ſhall be returned the firſt Return of the next Term. *Sho.* 336.

Juſtices of Peace muſt return, tho' Bail be not found according to the Stat. *D.* 1 *Sid.* 70.

Juſtices of Peace ought to return all Indictments againſt him who procures it, found before the Return, tho' not indicted at the Time of the awarding of the Writ, or Delivery to the Officer. *R.* 1 *Rol.* 395. *l.* 30.

If it be for Indictments againſt ſix named in the Writ, if four of them only are indicted, the Indictments ſhall be removed. *R.* 1 *Rol.* 395. *l.* 35.

The Names of the Indictors ought to be returned upon every Indictment removed. *St. P. C.* 71. *a.*

If there be a *Certiorari* for a Conviction, *&c.* it muſt be drawn in Form; for a Return of Affidavits and Warrants is not ſufficient. 1 *Sal.* 146.

So, if the Return be, *Tenor cujus Ordinis ſequitur*; for it ought to ſay, *qui quidem Ordo*, *&c.* 1 *Sal.* 147.

So, if there be a Return of a Tranſcript, the Record itſelf is removed. *Sal.* 565.

But if a *Certiorari* be for Indictments, in which *A. B.* and *C.* are indicted; an Indictment againſt *A.* alone, or againſt *A.* and *B.* ſhall not be returned. 1 *Sal.* 146. 151.

If, for an Order of Settlement at *N. M.* an Order which ſettles at *N.* only ſhall not be returned. *R. Sal.* 452.

So in ſome Caſes, the Return may be in *Engliſh*; as, in Orders by Juſtices, *&c.* 1 *Sal.* 149.

If the Juſtices do not make a Return, an *Alias* and *Pluries* go, and if they do not return the *Pluries*, *vel Cauſam*, an Attachment goes. *F. N. B.* 245. *A.*

But Juſtices of Peace need not ſubſcribe their Names; for *Reſponſio Juſticiariorum Dominæ Reginæ*, is ſufficient. *Mod. Ca.* 43.

So a *Certiorari* to remove an Order of Diſcharge of an Apprentice, need not return the Diſcharge itſelf under the Hands and Seals of the four Juſtices; for it is ſufficient to ſay, that there was an Order under their Hands and Seals. *R. Sal.* 470.

[A *Certiorari*, being directed to the *Cuſtos Brevium* of *C. B.* to return Original, he ſhall return the Original, and not that there is ſuch Original in his Office,

but not ſued, becauſe Plaintiff had entred *ne recipiatur*; if otherwiſe, *B. R.* will commit him. *Cork* v. *Baker*, *M.* 4 *G. Str.* 63.

If a *Certiorari* is directed to the *Cuſtos Brevium* of *C. B.* to certify an Original *in London*, and he returns there is none *in the City of London*, it is good; for the Court will take Notice that *London* is a City, it being mentioned to be ſo in ſeveral Acts of Parliament. *Withers* v. *Warner*, *P.* 6 *G. Str.* 309.

If, in a Return it is ſaid, that a Man took a Leaſe for ſeven Years, the Court will preſume it was by Deed. *Rex* v. *Little Dean*, *T.* 9 *G. Str.* 555.

The Return muſt be on Parchment; if on Paper, it ſhall be quaſhed. *Rex* v. *Stow Bardon*, *M.* 9 *G.* 2. *B. R. H.* 173.]

(D) When a Certiorari does not lie.

BUT a *Certiorari* lies only for the Tenor of a Record, when the Court, to which the Record by the *Certiorari* is removed, has no Juriſdiction to hold Plea upon the Record: As, if to an Information for Recuſancy in *C. B.* it be pleaded, that he is a Recuſant Convict before Juſtices of Peace, and upon *Nul tiel Record* a *Certiorari* goes to the Juſtices of Peace, the Tenor only of the Conviction ſhall be returned; for *C. B.* cannot hold Plea upon the Conviction, if it ſhould be removed. *R.* 1 *Rol.* 395. *l.* 50. *Hob.* 135.

So, if a Judgment in an inferior Court be pleaded; upon *Nul tiel Record* pleaded, if a *Certiorari* goes, only the Tenor of the Record ſhall be certified. *Dy.* 187. *a.*

So by Charter, the City of *London* certifies only the Tenor of the Record. 1 *Sid.* 155. 230.

By the St. 22 *Car.* 2. 12. It does not lie to remove Indictments for Repair of Cauſeys, Highways, or Bridges before Judgment.—But now by the St. 5 & 6 *W.* & *M.* 11. it ſhall be allowed upon an *Affidavit* that the Right of Repair is in Queſtion.

So by the St. 7 & 8 *W.* 3. 6. No *Certiorari* ſhall remove or ſuperſede the Proceedings or Judgment on that Act, unleſs the Title of the Tithes, *&c.* come in Queſtion.

So it ſhall not be granted, to remove a Commitment for Felony, 'till an Indictment found. 1 *Vent.* 63.

So a *Certiorari* ſhall not be granted, to remove an Indictment from the *Old Bailey*, or any Juſtices of Goal-Delivery, without ſpecial Cauſe. 1 *Sal.* 144, 150, 151. [*Rex* v. *Gunſton*, *P.* 10 *G. Str.* 583. *Rex* v. *Ferguſon*, *P.* 10 *G.* 2. *B. R. H.* 369.]

[*Certiorari* granted to the *Old Bailey*, to remove Indictment for Forgery, Defendant being of good Repute, and Proſecution on ſlight Grounds. *Rex* v. *Wills*, *P.* 9 *G. Str.* 549.

Certiorari refuſed to a Colonel indicted for Perjury. And the Court declared they muſt make no Diſtinction of Perſons, and that they cannot grant a *Certiorari* without Conſent of the Proſecutor. *Rex* v. *Puſey*, *M.* 13 *G. Str.* 717.

The Court will grant *Certiorari* to remove Indictment of Perjury from the *Old Bailey*, if Defendant has twice paid Coſts for not going on to Trial, the Judges being gone. *Rex* v. *Morgan*, *T.* 9 *G.* 2. *Str.* 1049.

Or, if Proſecutor's Attorney is Under-Sheriff of *Middleſex*, and attended the Grand Jury on finding the Bill. *Rex* v. *Webb*, *H.* 10 *G.* 2. *Str.* 1068.]

And if the Cauſe afterwards appears to be falſe, a *Procedendo* ſhall go. 1 *Sal.* 144.

So it ſhall not be granted to remove a Conviction of Recuſancy, in not taking the Oaths, *&c.* for thereby the Conviction would be made ineffectual. *R.* 1 *Sal.* 145.

[It does not lie, to remove a Poor's Rate itſelf. *Rex* v. *Uttoxeter*, *P.* 5 *G.* 2. *Str.* 933. *Rex* v. *Shrewſbury*, *P.* 7 *G.* 2. *Str.* 975.

Nor on an Order on 7 & 8 *W.* 3. *c.* 29. for the Pariſh at large to repair the Highways, in aid of the Inſhip. *Rex* v. *Eckerſhall*, *M.* 6 *G.* 2. *Str.* 944.]

Nor, for an Order of Juſtices, upon which an Appeal lies, before an Appeal, or the Time for an Appeal elapſed. 1 *Sal.* 147.

Yet, if no Objection is made 'till the Return filed, it will be too late. *Sal.* 147.

[Nor on an Appointment of Overſeers, after an Appeal lodged till the Seſſions have made a Determination. *Warwick's Caſe, Mich.* 8 *G.* 2. *Str.* 991.

But on Appointment of Overſeers before Appeal, it lies. *Ibid.*

And if on Appeal from a Poor's Rate, Seſſions order Books to be produced at an adjourned Day, *Certiorari* lies to remove that Order, notwithſtanding the Appeal. *Ibid.*

To the Quarter-Seſſions, to fetch up any Proceedings but their Orders; as their Refuſal of a Certificate of the Loſs of Malt burnt after Duty paid. *Caſe of Mayo* and *Parſons, M.* 7 *G. Str.* 391.]

So it ſhall not be granted regularly, after a Conviction upon an Indictment, before Judgment. 1 *Sal.* 149. *Mod. Ca.* 17. 61.

[A Verdict cannot be removed from Seſſions, before Judgment; and *Certiorari*, if granted, ſhall be quaſhed. *Rex* v. *Nicolls, P.* 18 *G.* 2. *Str.* 1227.]

And if granted before Conviction, and not ſerved till after, or Jury ſworn, it ſhall be quaſhed. *Mod. Ca.* 61.

[*Before Certiorari* iſſues to remove Order for Quaker's Tithes, it ought to be determined, whether the Title is really in Queſtion or not. *Rex* v. *Wakefield*, 31 *G.* 2. 1 *B. M.* 485.

If *Certiorari* has iſſued, and the Return filed, yet, if it appears that the Title is not really in Queſtion, the Court will order it to be ſuperſeded, *quia Improvide*, and the Return taken off the File. *Ibid.*

So if it iſſues, where it is taken away by Act of Parliament, (tho' Order of Seſſions refers it to the Court by Conſent of Parties) *Superſedeas quia improvide. R.* v. *Micklethwayte, H.* 10 *G.* 3. 4 *B. M.* 2522.]

So it is not uſually granted, to remove an Indictment for Forgery, Perjury, or other great Offence. 1 *Sid.* 54.

[If an Attorney is indicted at the Aſſizes for Forgery, in altering a Fault in a Writ under Seal, the Court will not grant *Certiorari*. *Rex* v. *Elford, M.* 4 *G.* 2. *Str.* 877. *Rex* v. *Baſtland, H.* 17 *G.* 2. *Str.* 1202.

Or, a Preſentment before Juſtices in *Eyre*, before Conviction. 1 *Sid.* 296.

Nor, to a new Juriſdiction erected by Statute, which has a final Authority; if it proceeds according to the Statute. 1 *Sid.* 296.]

Nor, uſually to a County Palatine. 2 *Bul.* 158.

So it ſhall not be granted, to remove a Record in which the King is concerned, without the Conſent of the Attorney General. *R. Hard.* 409. *Sti.* 295.

[It lies not to remove Ejectment from *Mayor's Court*, but *Hab. Corp.* and Plaintiff declares *de novo*. In Replevin it lies, and Parties do not begin *de novo*. *Barnes* 421.]

And it ſeems to be in the Diſcretion of the Court, to grant it, or not. *Sti.* 126. 211.

(E) When it ſhall be a Superſedeas.

IF a *Certiorari* be delivered to a Juſtice of Peace, or other Juſtice to whom it is directed, it ſhall be a *Superſedeas*, and every Proceeding afterwards is a Contempt. *R. Yel.* 32. 1 *Sal.* 148.

And every Proceeding afterwards is void. *Per Keble. Attorney-General, Cont.* 6 *H.* 7. 16. *R. Mar.* 27.

And Error lies for it. *R.* 1 *Sal.* 148.

If it be delivered to one Juſtice only, it ſhall be a *Superſedeas* to all. *Yelv.* 32.

Tho' the Party does not ſue for a Removal of the Record. *Yelv.* 32.

Tho' the Indictment be after the *Teſte* of the *Certiorari*. *Yel.* 32. *R.* 1 *Sal.* 149.

So,

So, if ſeveral are indicted, and one of them only brings a *Certiorari*, it ſhall be a *Superſedeas* to all of them. *Dub. Mar.* 112.

So, if one only tenders a Surety according to the Statute, and the others refuſe. *R. Mar.* 27.

So a *Certiorari* ſhall be a *Superſedeas* to the Juſtices, tho' delivered after the Return paſſed. *Yel.* 32. *R. Dy.* 245.

When a *Certiorari* is granted, the Party may have a *Superſedeas* out of *Chancery* to the Sheriff. *F. N. B.* 237. *E.*

So the Juſtices of Peace ought to award a *Superſedeas* to the Sheriff *ex Officio*. *Qu. F. N. B.* 237. *E.*

(F) When not.

BUT a *Certiorari* will not be a *Superſedeas*, if no Sureties are found, when required by Statute. *Mod. Ca.* 33, 43.

Or, if the Party does not try the Indictment afterwards, according to the Condition of the Recognizance given. *Mod. Ca.* 43.

So a *Certiorari* delivered after the Jury are impanelled, and ſworn, will not be a *Superſedeas* to the Taking of the Verdict. *R.* 1 *Sal.* 144.

Or, after a Warrant for Execution executed by Diſtreſs, the Officer may proceed in the Execution. *R.* 1 *Sal.* 147.

So, after a *Certiorari* for an Inquiſition for a Forcible Detainer, if there be a new Forcible Detainer, the Juſtices may record the Force, tho' they cannot make Reſtitution. 1 *Sal.* 151.

So a *Certiorari* in *Chancery* to remove the Tenor of a Record, will be no *Superſedeas*. *Semb. Skin.* 419.

(G) Procedendo.

IF Defendant is convicted on Confeſſion, and then Proſecutor brings *Certiorari*, Defendant ſhall have *Procedendo*. *Rex* v. *Gwynne*, *H.* 32 *G.* 2. 2 *B. M.* 749.

After a *Certiorari* returned and filed in *B. R.* no *Procedendo* goes. *Mod. Ca.* 33, 43. *Semb.* 1 *Sal.* 145.—*D. cont.* where the Cauſe ſuggeſted for the *Certiorari* appears falſe. 1 *Sal.* 144.

When *Certiorari* is filed, there muſt be a Motion to take it off the File, previous to Motion for *Procedendo*. *R.* v. *Lewis*, *T.* 9 *G.* 3. 4 *B. M.* 2456.

(H. 1.) Superſedeas to Proceſs.

SO after a *Superſedeas* to any Proceſs, all ſubſequent Proceedings are void.

As, after an *Habeas Corpora Juratorum*, if a *Superſedeas* be delivered to the Sheriff for ſtaying the Return of the Writ, and he afterwards return it at the Aſſiſes, and the Trial is had, and Judgment upon it; it will be Error. *R.* 2 *Cro.* 43.

(H. 2.) When it ſhall be granted.

A *Superſedeas* to Proceſs ſhall be granted, when the Party finds Surety to appear, and anſwer to the Law: As, in Term, it ſhall be granted out of *C. B.* to a *Capias* or Exigent, upon Surety taken by the Sheriff for his Appearance at the Day. *F. N. B.* 236. *A.*

So it ſhall be granted in the Vacation out of *Chancery*, upon Surety found there, or to the Sheriff. *F. N. B.* 236. *A.* *Vide in Chancery*, (4 Q.)

If the Sheriff, *&c.* do not ceaſe upon a *Superſedeas* delivered to him, an *Alias*, *Pluries*, and Attachment go againſt him. *F. N. B.* 236. *C.* 239. *A.* 240. *B.*

But

But a *Superſedeas*, in Reſpect of Privilege to be ſued in another Court, ſhall not be allowed, after he has acknowledged the Juriſdiction of the Court: As, after an Imparlance. *R.* 9 *Ed.* 4. 53. *b.*

Nor, a *Superſedeas* to an Exigent *quia improvidè*; for that recites an Appearance. *R. Dy.* 33. *b.*

Certiorari Bill.

Vide Chancery, (2 O. 1.)

CESSAVIT.

(A) When it lies.

BY the St. of *Gloceſter*, 6 *Ed.* 1. 4. If a Man leaſe Land to Farm, or to find Eſtovers, *&c.* to a fourth Part of the Value, and he who holds the Land lets it lie freſh, ſo that a Diſtreſs cannot be found for two Years: After the two Years the Leſſor may have an Action to demand the Land in Demeſne, by a Writ which he ſhall have out of *Chancery:* And if, before Judgment, the Arrearages and Damages are rendered, and Surety found to render thereafter, he ſhall retain his Land, *&c.*

This was the firſt Statute which gave a *Ceſſavit.* 2 *Inſt.* 295.

By the St. *W.* 2. 13 *Ed.* 1. 21. *Concordatum eſt eodem modo, ſi quis detineat Domino ſuo ſervitium debitum, & conſuetum per biennium.*

A Writ of *Ceſſavit* lies in the *Per, Cui,* and *Poſt.* *Vide F. N. B.* 208. *H.*

CESSION.

Vide Eſgliſe, (N. 1.)

CESTUY QUE TRUST.

Vide Chancery, (4 S. 3, 4.—4 W. 32.)

CESTUY QUE USE.

Vide Uſes, (I.)

CHAIRMAN of a Committee.

Vide Parliament, (E. 7.)

CHALLENGE.

(A) Trial by Jury.

(A.) 1. The Antiquity of it.

Vide Inqueſt. TRIAL by a Jury was before the Conqueſt.

(A. 2.) The Number of Jurors.

The uſual Number of Jurors is 12, for the Trial of a Cauſe.

But in an Attaint, except were the Iſſue is upon a collateral Point, there ought to be 24. 2 *Rol.* 673. *l.* 50.

In a Grand Aſſiſe 16. *viz.* 4 Knights and 12 others; ſo 20 or 12 only. 2 *Rol.* 674. *l.* 5.

In Inqueſts of Office there may be more, or leſs than 12. As in an Inquiry of Waſt. *R.* 2 *Rol.* 673. *l.* 53. *Cro. Car.* 414. *F. N. B.* 107. *C.*

(A. 3.) The Qualifications.

Jurors muſt be *probi & legales homines. Vide poſt* (C. 2.)

By the St. *Articuli ſuper Chartas* 28 *Ed.* 1. 9. The Sheriff ſhall put in Juries, ſuch as be next Neighbours, the moſt ſufficient and leaſt ſuſpicious, on pain of double Damages.

And by the St. 34 *Ed.* 3. 4. The next People not ſuſpected, nor procured.

(A. 4.) Who are exempted.

But by the St. *Weſt.* 2. 13 *Ed.* 1. 38. *Senes ultra* 70 *Annos, perpetuo languidi vel tempore Summonitionis infirmi, vel in Patria non commorantes, non ponantur in Juratis, aut Aſſiſis.*

And if theſe are returned, though it is not a Cauſe of Challenge, they may have an Action againſt the Sheriff, without Notice of the Age, Sickneſs, or Non-Commorancy; but it is more uſual to have a Writ *de non ponendis in Aſſiſis* 2 *Inſt.* 447. *Reg.* 179. *b.*

And if the Sheriff does not obey, an Attachment. *Reg.* 181. *a.*

[Officers on the Cheque-roll (as Gentlemen Penſioners, *&c.*) have an ancient Privilege not to be ſworn on Juries. *Blagney's Caſe, H.* 9 *G.* 2. *B. R.* H. 202.]

(B) Challenge to the Array.

THERE may be a Challenge to the Array, if there be a Default or Partiality in the Sheriff. *Co. L.* 156.

It will be a Principal Challenge, if the Sheriff does not return a Knight upon the Pannel, where a Peer appears upon the Record to be Plaintiff, or Defendant. *Co. L.* 156. 2 *Rol.* 636. *l.* 53. 2 *Mod.* 182.

Though others join with the Peer in the Action. *Co. L.* 156.

[A Knight need not be returned on the Pannel in Ejectment, on the Demiſe of a Peer. *Goodtitle* v. *Thruſtout, M.* 9 *G.* 2. *Str.* 1023.

By *ſtat.* 24 *G.* 2. *c.* 18. Challenge to the Pannel for want of a Knight, when a Peer is Party, is taken away.]

So, if the Sheriff does not return a Knight upon the Pannel in an Attaint. *Co. L.* 156.

For

For more concerning Challenge to the Array, Principal and for Favour, *Vide Co. L.* 156, *&c.*

[After entering into the common Rule for a ſpecial Jury, if one of the Parties ſtrikes out Hundredors, and at the Trial challenges the Array for want of Hundredors; it is a Contempt and Attachment ſhall iſſue. *Rex.* v. *Burridge*, P. 10 *G.* 2 *Ld. Raym.* 1364. *Str.* 593.

But if the Defendant in a an Information obtain Rule for ſpecial Jury, tho' Proſecutor takes the *venire* to the Sheriff, the Defendant may challenge the Array if the Sheriff has an Intereſt in the Cauſe, and it ſhall not be Contempt. *Rex* v. *Johnſon*, *M.* 8 *G* 2. *Str.* 1000.

The Party to whom the Sheriff is related cannot challenge the Array for that Reaſon. *Semb.* But if he does, and there is a Demurrur *inſtanter* to that Challenge, and before it is determined, the other Party, for the ſake of Expedition, moves to quaſh the Array, the Court will do it without the Conſent of the Party challenging. *Kynaſton* v. *Mayor of Shrewſbury*, *H.* 11 *G.* 2. *Andr.* 85, 104.

In an Action on a By-law, that none but Freemen ſhall keep Shop in a City, is good Challenge that the Sheriff is a Freeman. *Heſketh* v. *Braddock*, *H.* *G.* 3. 3 *B. M.* 1847.]

(C.) Challenge to the Polls.

(C. 1.) Peremptory.

IN High Treaſon, the Defendant by the Common Law, and now by the St. 1 & 2 *Ph. & M.* 10. (which repeals the St. 33 *H.* 8. 23. to the contrary) may challenge 35 of the Jury, peremptorily without Cauſe ſhewn. *Co. L.* 156. *b.*

Though he be outlawed for Treaſon, and the Iſſue be upon a Collateral Point. *Co. L.* 157. *b.*

So, if he at firſt challenge for Cauſe, and the Juror be tried and found indifferent, he may afterwards challenge peremptorily. *Co. L.* 158. *a.*

So in *Petit Treaſon*, or Felony by the Common Law he might challenge 35, which is now reſtrained by the St. 22 *H.* 8. to 20, without Cauſe ſhewn. *Co. L.* 156. *b.*

So, in an Appeal. *Bendl. Pl.* 77. *Mo.* 12.

So the King by the Common Law might challenge without Cauſe ſhewn, when he pleaſed; but he is now reſtrained by the St. 33 *Ed.* 1. *Ord. de Inq.* *Co. L.* 156. *b.*

And therefore, if he challenge without Cauſe, and others ſufficient do not appear, he muſt ſhew his Cauſe of Challenge. *R. Ray.* 473, 4.

[On an Iſſue on a collateral Point, to reverſe an Outlawry, or avoid an Act of Attainder, or on any Inqueſt of Office, the Priſoner has no peremptory Challenge. 2 *Hale* 267, 278. *Barkſtead's Caſe.* 1 *Lev.* 62. *Rex* v. *Johnſon*, *Str.* 824. *Ratcliffe's Caſe*, 1746. *Foſter* 40.]

(C. 2.) For Cauſe.

Challenge for Cauſe is Principal, or to the Favour.

A Principal Challenge is, 1*ſt* in reſpect to his Dignity, that he is a Peer. *Co. L.* 156. *b.*

And if the Party do not challenge him, the Peer may challenge himſelf. *Co. L.* 156. *b.*

2*dly Propter Defectum*; That he is a Villein, or an Infant. *Co. L.* 156. *b.* 157. *a.* 2 *Rol.* 657. *l.* 10.

That he is an Alien. *Co. L.* 156. *b.*

But by the St. 27 *Ed.* 3. 8. An Inqueſt taken before the Mayor of the Staple, if the Parties be Strangers, ſhall be tried by Strangers; if Denizens, by Denizens; if one Party be Denizen the other Alien, one half of the Inqueſt ſhall be Denizens, the other Aliens. *Vide Alien.* (C. 8.)

So, by the St. 28 *Ed.* 3. 13. In all Inqueſts before the Mayor of the Staple, or other Juſtice between Merchants or others, though the King be Party, if there be ſo many Aliens or Denizens in the Place where the Trial is, not Parties to the Matter; if there are not ſo many Aliens, ſo many as are there, the Reſt Denizens, good Men, and not ſuſpicious to either Party. *Confirmed by the St.* 9 *H.* 6. 29.

And therefore an Alien, Plaintiff or Defendant may pray a *Venire per Medietatem Linguæ*, except in a Trial for High Treaſon. *R. Dy.* 144. *b.*

So an Executor, or Adminiſtrator of an Alien, though he himſelf be *Indigena*. *Dy.* 28. *a. in Marg.*

And if a full Inqueſt does not appear, the *Tales* ſhall be *per Medietatem Linguæ*. *R. Poph.* 36. *Dy.* 28. *a. in Marg.*

Yet if an Alien be joined in a Suit with an Engliſhman, or ſue as Executor, or Adminiſtrator to ſuch an one, he ſhall not have a *Venire per Medietatem Linguæ*. *Mo.* 557. *Cro. El.* 275. *Dy.* 28. *a.*

And if he does not pray ſuch a *Venire* a Challenge for Default of Aliens is not allowed *Vide Dy.* 28. 144. *b.*

So if the Alien does not pray it, the other Party may, but he need not. *Dy.* 28. *a.* 144.

So if they are returned upon the *Venire* as Aliens, they cannot be challenged, though they are not ſo. *Dy.* 28. *a. in Marg.*

And a Trial *per Medietatem Linguæ*, where it ought not to be, is not good, though by Conſent; for that ſhall not alter the Law. *Dy.* 28. *a. in Marg.*

Nor by the St. *Weſt.* 2. 13 *Ed.* 1. 38. *ponantur in Aſſiſis vel Juratis licet in proprio comitatu qui* 20 *s. per Annum non habeant, nec extra Comitatu qui* 40 *s.*

By the St. *de non ponendis in Aſſiſis*, 21 *Ed.* 1. The Sheriff ſhall not put in Recognizances that paſs out of the County, any who have not 100*s. per Annum.* And in the County none ſhall be impanelled to ſerve before the King's Juſtices on Inqueſts, Juries, or other Recognizances, who have not 40s. *per Annum.* ſave that in *Eyre*, Cities, Boroughs, or Towns, where Juries paſs on Matters touching the ſaid Cities, *&c.* it ſhall be done as before.

By the St. 2 *H* 5. 3. *St.* 2. No Perſon ſhall be admitted in any Inqueſt on a Trial of the Death of a Man, or in a Plea Real or Perſonal, where the Debt or Damages are laid to 40 Marks, if he have not Lands or Tenements of 40*s. per Annum* above Reprizes, ſo it be challenged, *&c. Vide* 35 *H.* 8. 6.

Nor by the St. 27 *El.* 6. If he have not Freehold of 4*l. per Annum*, unleſs in *Wales*, Cities, or Towns, *&c.*

Nor by the St. 4 *&* 5 *W. & M.* 24. (Continued by 7 *&* 8 *W.* 3. 32. 1 *Ann.* 13. 10 *Ann.* 14. *&* 9 *G.* 8.) if he have not 10*l. per Annum* in his own Name, or in Truſt in *England*, and 6*l. per Annum* in *Wales* in the ſame County, Freehold, Copyhold, or *Antient Demeſne* in Fee, Tail, or for Life of himſelf or ſome other, in Iſſues tried before the Juſtices in *B. R. C. B. Exchequer*, Aſſiſe, *Niſi Prius, Oyer and Terminer*, Goal-Delivery, or General Quarter Seſſions of the Peace, *&c.*

Provided, that the Tales need have but 5*l. per Annum*, and in *Wales* 3*l.* and in Cities, Boroughs, and Towns Corporate, as formerly uſed.

And any not having ſo, may be challenged, and on his Oath diſcharged.

Jurors ſince the St. 2 *H.* 5. 3. muſt have 40*s. per Annum* Freehold out of *Antient Demeſne*. *Co. L.* 156. *b.* 9 *H.* 7. 1. *b.*

And it is ſufficient, if they have it as *Ceſtuy que Uſe*. *Co. L.* 272. *a. b.*

If the Debt *and* Damages together amount to 40 Marks, it is within the St. 2 *H.* 5. 3. for it is in equal Miſchief. *R.* 9 *H.* 5. 4. *b. Vide Co. L.* 272. *a.*

So in an Avowry, where the Iſſue was *hors de ſon Fee*, tho' the Damages are not 40*s.* *R. per Juſt. de B. R. & C. B.* 9 *H.* 7. 1. *b.* 16 *H.* 7. 14. *b.* 10 *H.* 6. 8. *a.*

In an Action upon the St. 8 *H.* 6. 10 *H.* 7. 14. *a.*

So by the St. 8 *H.* 6. 9. None ſhall be upon Inqueſts to try a Forcible Entry, or Detainer before Juſtices of Peace, unleſs he hath 40*s. per Annum.*

Nor, by the St. 15 *H.* 6. 5. To try an Attaint on a Verdict to 40*l.* Value, who hath not 20*l.* Or by the St. 23 *H.* 8. 3. 20 Marks *per Annum*, or on a Verdict to a leſs Value, who hath not 5 Marks *per Annum*, or 100*l.* in Goods, except in Cities, or Boroughs, &c.

Nor, by the St. 1 *R.* 3. 4. Upon an Inqueſt in the Sheriff's Turn, or by the St. 19 *H.* 7. 13. To try Riots or Routs before Juſtices of Peace, unleſs he hath 20*s. per Annum* Freehold, or 26*s.* 8*d. per Annum* Copyhold.

Nor, by the St. 11 *H.* 7. 21. Upon a Jury in any of the Courts in *London*, except he hath Lands or Goods to the Value of 40 Marks, or of 100 Marks, if the Suit be for Lands, or for a Debt and Damages to 40 Marks Value, or more.

But where the Debt and Damages do not amount to 40 Marks, he ſhall not be challenged, if he has any Freehold. *Co. L.* 156, 7. 2, Whether he muſt not have 20*s. per Annum.* 2 *H.* 7. 13. *b.*

So before the St. 2 *H.* 5. 3. In Perſonal Actions, where Land was not demanded, it was no Challenge, that a Juror had no Freehold; for the St. 4 *W.* 2. 28. was made for the Eaſe of Jurors of ſmall Eſtate only. 17 *Aſſ.* 15. *Vide Ray.* 486. *Semb.* 10 *H.* 7. 14. *a.*

So in an Information in the Nature of a *Quo Warranto*, it is no Challenge, that a Juror has not a Freehold; for it is out of 2 *H.* 5. 3. which provides for a Plea between Party and Party only. *R. per* 4 *J. in B. R. to whom* 3 *J. in C. B. acc. But a Bill of Exceptions was filed for it. Ray.* 486.

So the Exception for Cities, &c. in the St. 15 *H.* 6. 5. extends to Cities, &c. which are Counties. *R.* 12 *Ed.* 4. 13. *a.*

So by the St. 11 *H.* 7. 21. In an Attaint in *London*, the Challenge ſhall not be for want of Sufficiency of Lands or Goods in the Jury impannelled, the Jury being to be returned, by each Alderman 4, each in Subſtance worth 100*l.* or more. So by the St. 37 *H.* 8. 5. if each Juror be worth 400 Marks in Goods.

So in a Jury for a Trial for High Treaſon, a Challenge for Defect of Freehold is not allowed in *London*; for Freehold was not required by the Common Law, and tho' the St. 2 *H.* 5. 3. requires 40*s. per Annum* in an Inqueſt for the Death of a Man, (which ſeems to be intended in all capital Caſes,) yet, by the St. 1 & 2 *Ph. & M.* the Trial in High Treaſon was reduced to the Common Law. *R. per* 4 *J. in Lord Ruſſell's Caſe*, 3 *Trials* 138.

But by the St. 7 *W.* 3. 3. The Trial ought to be by a Jury of Freeholders.

[If a Juryman in Treaſon, brought to the Book, ſays he has no Freehold in the County, he ſhall be ſworn upon a *voire dire* to that Matter, and if he anſwers, he has none, he ſhall be ſet aſide. *Townley's Caſe*, 1746. *Foſter* 7.

If a Juryman has Freehold and Copyhold, amounting to 10*l. per Ann.* it is a good Qualification, tho' the Freehold alone is under 10*l. per Ann. Ibid.*

So by the St. 4 *Geo.* 2. 7. In *Middleſex*, Leaſeholders having 50*l. per Ann.* above Ground Rents, or other Reſervations, ſhall be obliged to ſerve on Juries, when ſummoned.

[" That a Juror is a Freeman," is good Cauſe of Challenge in an Action on a By-Law, that none but Freemen ſhall keep Shop in a City. *Heſketh* v. *Graddock*, *H.* 6 *G.* 3. 3 *B. M.* 1847.]

For more concerning Challenge to the Polls, Principal and for Favour. *Vide Co. L.* 156. *b. &c.*

CHAMBERLAIN.

High Chamberlain.

Vide Officer, (E. 7.)

Chamberlain of Chester.

Vide Franchises, (D. 5.)

Chamberlains of the Exchequer.

Vide Courts, (D. 11.)

Chamberlain of London.

Vide London, (I.)

CHAMPERTY.

Vide Maintenance, (A. 2, 3.)

CHANCELLOR.

Chancellor.

Vide Chancery, (B. 1.)—*Justices*, (K. 8.)—*Parliament*, (L. 32.)—*Visitor*, (A. 2.)

Chancellor of the Exchequer.

Vide Courts, (D. 9.)

CHANCE-MEDLEY.

(*Vide Justices*, (M. 19.)

CHANCERY.

(A) The Antiquity of the Chancery.

(A. 1) As to the Court of Pleas.

THE Court of *Chancery* is an Original, and Fundamental Court, as antient as the Kingdom itself. *Per Hob.* 63.

The *British* and *Saxon* Kings had their Chancellors and Courts of *Chancery*. 4 *Inst.* 78. *Arg.* 1 *Ch. R.* 5.*. *Wilfint* was Chancellor to *Athelstan*. 1 *Ch. R. Arg.* 5.

* Argument on Jurisdiction of *Chancery*.

The

The first authentic Mention of a Chancellor was *Anno* 920, *Temp. Edw. Senioris, qui fecit Turketil Abbatum Croiland Cancellarium suum. Seld. Off. Canc.* S. 1. 1 *Ch. R. Arg.* 5.

And many Kings of the *Saxon* Lineage before the Conquest had their Chancellors. *Seld. Off. Canc. S.* 1. 4 *Inst.* 78.—As *Edmund, Edred, Edgar, Etheldred,* and *Alfred.* 1 *Ch. R. Arg.* 5, 6.

Rembald was Chancellor to *Edward* the Confessor; and several are cited before him. 1 *Rol.* 384. *l.* 10. *Maurice* was Chancellor to *William* the Conqueror. 1 *Rol.* 384. *l.* 15. 4 *Inst.* 78. *Seld. Off. Chanc. S.* 3.

(A. 2.) As to the Court of Equity.

But tho' the Court of Chancery, as to the ordinary Jurisdiction, which is governed by the Rules of the Common Law, is so antient, (for to that the antient Authors and the St. 36 *Ed.* 3. 9. refer,) yet the Court of Equity is of later Date, and seems to have its Commencement upon the Introduction of Uses: The first Decree there was 17 *R.* 2. which are frequent in the Time of *H.* 4. encrease in the Time of *H.* 5. and *H.* 6. under the Cardinals *Beauford,* Son of *John of Gaunt,* and *Kemp,* and are more numerous in the Time of *H.* 8. under Cardinal *Wolsey.* 2 *Inst.* 552, 3. 4 *Inst.* 82, 3.

Yet the Court of Equity there is said to be as antient as the Kingdom. *Hob.* 63.

And by the St. 14 *Ed.* 3. *Rot. Parl. nu.* 33. If nothing be done upon the Ordinance then made, it is provided, that the Chancellor of *England* hear the Complaint by Bill, and proceed as he uses to do in Writs of *Subpœna* in *Chancery.* 1 *Rol.* 372. *E.*

And *Rot. Parl.* 45 *Ed.* 3. *nu.* 24. The Commons pray, That none who proceed there by Bill be delayed, as they have been. 1 *Rol.* 372. *l.* 25.

And the Court of Equity seems Co-eval with the other Courts of *Westminster.* 1 *Ch. R. Arg.* 10. 12 *Co.* 114. *Eq. Abr.* 129.

(A. 3.) It cannot now be erected.

The King cannot grant a Court of Conscience, as *tenere Placita*; for a Court of Pleas is directed by the ordinary Rules of Law, a Court of Conscience not, but is uncertain and unlimited, and therefore cannot be erected but by Act of Parliament, or Præscription. *R. Perrot's Case,* 36 [26] *El. B. R.* 4 *Inst.* 87, 97. *Vide Prærogative,* (D. 28.)

And *dub.* whether it be good by Præscription; for that pre-supposes a Grant; and the Court of *Chancery,* which is held by Præscription, is a Fundamental Court. *Hob.* 63. 2 *Rol.* 109. *R.* that it is not good by Præscription for *York,* or other small Corporation. 2 *Rol.* 266. *l.* 20.

But *London* may claim it by Præscription. *R.* 2 *Rol* 266. *l.* 15.

So the King cannot by Commission appoint any one to determine Matter of Equity; for it ought to be determined in *Cancery,* and such Commission would be illegal and void. *R.* 12 *Co.* 114.

So, if the King constitutes a Chancellor of a Dutchy, or other Præcinct, that does not give him Authority to hold a Court of Equity. 2 *Lev.* 24.

(A. 4.) Where held.

The Court of *Chancery* was usually held *in Curia Regis*; and therefore the Process there is returnable *coram Rege in Cancellariâ suâ. Mad.* 131. 2 *Inst.* 316.

(B) Officers of the Chancery.

(B. 1.) Lord Chancellor.

THE principal Officer of the *Chancery* is the Lord Chancellor.

Temp. Ethelberti dicitur Referendarius; Ego Referendarius ſubſcripſi. Seld. Off. Ch. S. 1.

The Chancellor is created by the Delivery of the Seal, and taking his Oath. 4 *Inſt.* 87.

Sometimes by Letters Patent. 4 *Inſt.* 87.

This Office may be granted for Life, or *durante bene placito*. *Mad.* 43.—Not for Life. 4 *Inſt.* 87.

But not in Succeſſion. 4 *Inſt.* 78.

Cancellarii Dignitas eſt ut ſecundus a Rege in regno habeatur. Seld. Off. Ch. S. 3. *Dict. in vitâ Tho. Becket.*—4 *Inſt.* 78.

By the St. 31 *H.* 8. 10. The Chancellor, or Keeper hath Precedence of all Nobility, except the Royal Blood. [Q. As to Archbiſhop of *Canterbury*?]

The Chancellor is ſuperior to all the Judges of the Kingdom. 1 *Ch. R. Arg.* 13.

Cancellarius dicitur a cancellando; becauſe upon a *Scire Facias* he cancels the Patents of the King. 4 *Inſt.* 88.

The Chancellor and *Cuſtos Sigilli* antiently were one Officer.

Sigillum Regium ad ejus pertinet Cuſtodiam. Dict. in vita Tho. Becket. Seld. Off. Ch. S. 3. 4 *Inſt.* 78.

And tho' they have been ſometimes divided ſince the Time of *H.* 2. *Seld. Off. C. S.* 4. 1 *Rol.* 385. *l.* 25, *&c.*

Yet, by the St. 28 *H.* 3. it was enacted, *Si Rex abſtulerit Sigillum a Cancellario, quicquid fuit interim ſigillatum irritum habeatur. Seld. Off. Ch. S.* 4.

By the St. 5 *El.* 18. The Lord Keeper ever had, and ſhall have like Place, Authority, Juriſdiction, and Advantages, as the Lord Chancellor. *Semb.* by moſt of the Judges. 3 *Inſt.* 113, 114.

By the St. 1 *W. & M.* 21. Commiſſioners of the Great Seal ſhall exerciſe like Authority, Juriſdiction, and uſe the like Cuſtoms, Privileges, and Advantages as the Lord Chancellor, and Keeper; and have Precedence after Peers, and the Speaker of the Houſe of Commons, or, if a Peer, according to Peerage.

And now there cannot be a Lord Chancellor and Lord Keeper at the ſame Time; for, by the St. 5 *El.* 18. they are declared to be the ſame Office. 4 *Inſt.* 88.

The Chancellor, or Keeper is made by the Delivery of the Great Seal to him by the King, and taking his Oath. 4 *Inſt.* 87.

The Lord Chancellor, or Keeper, cannot make a Deputy. 4 *Inſt.* 88; but this was allowed, when the Office was granted for Life. *Mad.* 44.

By the St. *Art. ſuper Chart.* 28 *Ed.* 1. 5. The Lord Chancellor and the Juſtices of the King's Bench ſhall follow the King, ſo that he may have at all Times near him ſome Sages of the Law able to order all Matters which ſhall come to the Court.

Cancellaria Dignitas eſt ut omnibus Regis adſit Conciliis, etiam non vocatus. Seld. Off. Canc. S. 3.

So the Chancellor may hear Cauſes in *B. R.* or *C. B.* 2 *Inſt.* 552, 3.

[A Perſon may be Lord Chancellor and Lord Chief Juſtice of *B. R.* at the ſame Time, and Lord *Hardwicke* continued ſo from 20th *Feb.* to 7th *June*.]

When the King's Charters and Pleas in the King's Courts encreaſed, and the Power of the Chief Juſticier declined, the Office of Chancellor roſe to great Eminence. *Mod.* 42, 3.

(B. 2.) His Oath.

The Chancellor was ſworn that he ſhould not ſell, deny, or delay a remedial Writ, or Right. 1 *Rol.* 384. *l.* 35.

And

And the uſual Oath requires, That he ſhall well and truly ſerve the King and his People in the Office of Chancellor; That he ſhall do Right to all People, Poor and Rich, after the Laws and Uſages of the Realm; That he ſhall truly counſel the King, and his Counſel laine (*i. e.* hide) and keep; That he ſhall not ſuffer the Hurt or Diſheriſon of the King, or that the Rights of the Crown be decreaſed, as far as he can lett it: And if he cannot lett it, ſhall make it expreſſly known to the King, with his Advice and Counſel; That he ſhall do the King's Profit in all he reaſonably may. 4 *Inſt.* 88. 3 *Ruſh.* 1102.

And therefore, if a Chancellor ſell a Writ remedial, it is a great Abuſe. 1 *Rol.* 384. *l.* 30. (B. 3.) And Duty.

A Chancellor, upon the Removal of a Record before him by *Certiorari*, when any one is found guilty of Homicide by Miſadventure, or *ſe Defendendo*, ſhall grant him a Pardon, without a Warrant from the King, or Communication with him. 2 *Inſt.* 316.

Vide Poſt, (C. 1, 2.)

(B. 4.) Maſter of the Rolls.

Ad Cancellarium pertinet Rotuli qui eſt de Cancellaria Cuſtodia per ſuppoſitam perſonam. Seld. Off. Chan. S. 3.

And his Office is as antient as the Court itſelf.

In the 23 *Ed.* 1. a Grant was made *Adæ de Oſgodby*, by the Chancellor *ex parte Regis. Dugd. Orig. Jud. Chronica Series.* 33.

And ſuch Grant was, *ita quod Cuſtodiam habeat eodem modo, quo alii Cuſtodes habere conſueverunt.*

It is ſaid, that the Maſter of the Rolls by his Commiſſion cannot make a Decree, without the Aſſiſtance of two Maſters; 1 *Ver.* 274.; but this does not appear by the Decretal Order there recited.

[By St. 23 *G.* 2. 1200*l. per Annum* is ſettled on him.]

[St. 17 *G.* 3. *c.* 59. regulates Leaſes to be made of his Eſtate.]

(B. 5.) Maſters of Chancery.

There are twelve Maſters of *Chancery*, Aſſiſtant to the Chancellor, or Keeper. *Vide Practical Regiſter in Chancery* 236.

Cancellario aſſocientur Clerici honeſti, &c. Regi Jurati, qui in Legibus & Conſuetudinibus Anglicanis noticiam habent pleniorem, quorum officium ſit querelas, &c. audire & examinare & debitum Remedium exhibere per brevia Regis. Fleta, l. 2. *c.* 13. 2 *Inſt.* 407.

And by Commiſſion a Judge frequently hears Cauſes in *Chancery*.

But if the Maſters in *Chancery* diſagree to the Opinion of the Judge, there ſhall be no Decree; for they are equal in Commiſſion. *Semb.* 1 *Ver.* 265.; but it is ſaid, that this does not appear by the Decree.

A Maſter in *Chancery* ſhall not be anſwerable for a Security approved by him, if there was no Corruption in him, altho' it prove defective. *R.* 2 *Ver.* 90.

[By the 12 *G.* 2. *c.* 24. the Sums of 35,000*l.* of the Caſh of the Suitors in *Chancery*, lying unemployed in the Bank, was to be laid out in Government Securities, to raiſe Salaries of 650*l.* 250*l.* and 120*l.* for the Accountant-General and his two Clerks, in lieu of all Fees. This Officer was created by St. 12 *G.* 2. *c.* 32. to take care of and manage the Suitors Money, inſtead of the Maſters in Chancery, and is uſually one of them.]

[By 4 *G.* 3. *c.* 32. a further Sum of 5000*l.* is to be laid out for the ſame Purpoſe, for a third Clerk.]

[By the 5 *G.* 3. *c.* 28. 80,000*l.* of ſaid general Caſh to be veſted in Securities to pay 200*l. per Annum* to each of the ſaid Maſters.]

[By St. 9 *G.* 3. *c.* 19. 20,000*l.* is to be laid out to pay Accountant-General 250*l.* firſt Clerk 50*l.* ſecond Clerk 40*l.* and to a fourth Clerk 120*l. per Ann.*]

[By St. 14 G. 3. c. . and 15 G. 3. c. 22. & c. 56. New Offices for the Accountant-General, Regiſters, and Six Clerks, are to be built in Part of *Lincoln's-Inn* Gardens.]

(B. 6.) The Regiſter.

The Regiſter is an Officer of Note, who has many Deputies, who take Notice of all Orders and Decrees made by the Court. *Vide Practical Regiſter in Chancery* 254. 310.

Theſe Orders he ought to draw up, enter in his Office, ſign, and deliver to the Parties. *Ibid.* 254, *&c.*

He ought to take the Orders as the Court pronounces them. *Ibid.* 255.

He ought to recite the firſt Order, (if there be ſuch,) in the ſubſequent one. *Ibid.* 257.

If the Order be out of a General Rule, he ought to recite the Reaſons for making it. *Ibid.* 257.

If the Order be for a Reference to Arbitrators after the Hearing, he ought to mention the Opinion of the Court, unleſs the Court otherwiſe directs. *Ibid.* 260.

(B. 7.) The Six Clerks.

The Six Clerks are the only Attornies to the Court of *Chancery*, and the others are Under Clerks to them. *Ord. per Clarendon. Rules and Orders of Chancery* 110. *Vide Practical Regiſter in Chancery* 60.

All the Proceedings, upon Bill and Anſwer, to the Decree, and ſometimes after the Decree, belong to their Office. *Vide Practical Regiſter in Chancery* 60.

Copies of the Bill, Anſwer, Depoſitions, or other Record, which belong to the Six Clerks to make, ought to contain 15 Lines in every Sheet, written plainly and fully. *Ord. per Cla. Rules and Orders of Chancery* 104. *Vide Practical Regiſter in Chancery* 113.

And no ſuch Copy ſhall be delivered out of the Office, till ſigned by the Six Clerk, or his Deputy. *Ord. per Cla. Rules and Orders of Chancery* 104. *Vide Practical Regiſter in Chancery* 64. 113.

Nor ſhall it be uſed in Court, or before a Maſter. *Ord. per Cla. Rules and Orders of Chancery* 104. *Vide Practical Regiſter in Chancery* 113.

All Pleadings, Commiſſions, and Certificates which belong to them, ſhall be immediately delivered to the Six Clerk, who is the Attorney in the Cauſe, or to his Deputy; nor ſhall they before that be opened by any Under Clerk. *Ord. per Cla. Rules and Orders of Chancery* 107.

No Bill, Pleading, Commiſſion or Decree, ſhall be carried by any Under Clerk out of the Office, to be ingroſſed, copied or inrolled: And after the Ingroſſment, *&c.* the Original ſhall be remitted to the Six Clerk, to whoſe Cuſtody it belongs. *Ord. per Cla. Rules and Orders of Chancery* 107.

[A Clerk in Court, who lends Money to a Solicitor, cannot retain a Client's Papers as a Pledge for it. *Grey* v. *Cockeril, M.* 1740. 2 *Atkyns* 114.]

[A Six Clerk is not obliged to deliver up Papers till he is ſatisfied his Fees, tho' the Client has paid them to the Solicitor, and he to the Sixty Clerk who abſconds. *Taylor* v. *Lewis, M.* 1750. 3 *Atkyns* 727.]

[A Clerk in Court has a Lien on the Duty recovered by him, which extends to collateral Proceedings, as well as to Decree; and this ſhall not be defeated by a voluntary Releaſe from his Client, tho' a Releaſe for Conſideration ſhall defeat him. *Anon. T.* 1750. 2 *Vezey* 25.]

[A Sixty Clerk cannot be changed at Pleaſure. *Taylor* v. *Lewis, M.* 1750. 2 *Vezey* 111.]

(B. 8.) Warden

(B. 8.) Warden of the Fleet.

The Warden of the Fleet is an Officer of this Court, and attends to receive all Perſons it ſhall commit to his Cuſtody.

Vide Impriſonment. (D.)

(B. 9.) Other Officers.

As to the Examiners, *Vide Poſt*, (P. 1, &c.)

As to the Curſitors, and other Officers, *Vide* 4 *Inſt.* 82.

(C) The Juriſdiction of The Chancery.

(C. 1.) Ordinary, according to the Common Law.

IN the *Chancery* there are two Courts; The Ordinary, where the Chancellor or Keeper proceeds according to the Common Law. 4 *Inſt.* 79. *Eq. Abr.* 127.

The Stile of this Court is, *coram Domino Rege in Cancellariâ.* 4 *Inſt.* 80. 2 *Inſt.* 552.

Out of this Court iſſue all original Writs. 4 *Inſt.* 80. *Eq. Abr.* 128.

All Commiſſions that paſs the Great Seal. 4 *Inſt.* 80.

Deeds are there inrolled. 1 *Rol.* 372. *H.*

Statutes, which impower the Chancellor to hear and determine Offences, intend this Court. 4 *Inſt.* 81, 2.

This Court holds Plea upon Attachment of Privilege, for the Clerks and Officers of the *Chancery.* 4 *Inſt.* 79, 80. 1 *Rol.* 371. *l.* 30.

In an *Auditâ Querelâ*, or *Scire Facias* in the Nature of an *Auditâ Querelâ*, to avoid Executions of the Court of *Chancery.* 4 *Inſt.* 79. *Eq. Abr.* 128.

In Petitions, and *Monſtrans de Droit.* 4 *Inſt.* 79. *Eq. Abr.* 128.

In a *Scire Facias* to annul Patents. 4 *Inſt.* 79. 88. 2 *Vent.* 344.

In a *Scire Facias* upon a Recognizance in this Court. 4 *Inſt.* 79. *Eq. Abr.* 128.

Upon a Statute Staple, or Recognizance upon the Statute 23 *H.* 8. 4 *Inſt.* 79. 1 *Rol.* 371. *l.* 30.

In a *Scire Facias* upon Letters of Repriſal. 1 *Ver.* 54.

In Dowments made in *Chancery.* 4 *Inſt.* 79. *Eq. Abr.* 128.

In Partitions. 4 *Inſt.* 79.

In Traverſes of Office. 4 *Inſt.* 79. *Eq. Abr.* 128.

In Debt, or Treſpaſs againſt the Officers of the Court. *D.* 20. *H.* 6. 32. *b.* 1 *Rol.* 371. *l.* 30.

And in all Perſonal Actions for, or againſt ſuch Officers, and Miniſters of the *Chancery.* 4 *Inſt.* 80. *Eq. Abr.* 128.

But this Court does not hold Plea of Land. *D.* 20 *H.* 6. 32. *b.* *Eq. Abr.* 128.

And therefore, where a Woman ſued for a Jointure in the *Chancery* of *Cheſter*, a Prohibition was granted. 1 *Sid.* 189.

The Chancellor is the ſole Judge in this Court. 4 *Inſt.* 80.

The Proceedings there are in *Latin.* *Eq. Abr.* 128.

And are not inrolled, but remain *in Filaciis*, filed in the Office of the Petty Bag. 4 *Inſt.* 80.

If there be a Demurrer in this Court, it ſhall be determined by the Chancellor. 4 *Inſt.* 80.

If Iſſue be joined, the Chancellor, *&c.* delivers the Record with his own Hand to *B. R.* to be there tried: But after Trial, it ſhall be *remanded, and Judgment given in Chancery.* 4 *Inſt.* 80. *Vide* 1 *Rol.* 372. *l.* 35. *Vide Lat.* 3. *Vide infra.*

And

And both Courts are but one for this Purpoſe. 4 *Inſt.* 80.

After Iſſue, a *Venire* out of *Chancery*, *Quorum quilibet habeat* 4 *Libratas Terræ*, will be well. *Al.* 14.

And the *Venire* ſhall be awarded in *Chancery* returnable in *B. R.* *Al.* 14.

If the Iſſue ariſes in a County Palatine, *Ireland*, *&c.* the Chancellor ought to deliver the Record to *B. R.* and they write to the County Palatine, *Ireland*, *&c.* to try, and return it to *B. R.* *Lat.* 3. *R. per* 3 *J. Jon.* 82. *Vide* 3 *Bul.* 305.

But the Chancellor cannot write to the County Palatine, *Ireland*, *&c.* to try the Iſſue. *R. Lat.* 3.

Nor can he tranſmit the Record to be tried in *C. B.* *Lat.* 3.

Yet, if the Iſſue is to be tried by Certificate, the Chancellor may write to the Biſhop, *&c.* *Lat.* 3. *Vide Jon.* 83.

After Iſſue tried in *B. R.* or in a County Palatine, *&c.* and thither returned, *B. R.* ſhall give Judgment upon it, and it *ſhall not be remanded to the Chancery.* *Lat.* 3. *Eq. Abr.* 128. *Vide ſupra.*

So, tho' only the Tenor of the Record, upon which the Iſſue was, be removed into *B. R.* and a Trial upon it. *R. Al.* 17.

So if there be a Demurrer for Part, and Iſſue for other Part, in *Chancery*, the whole Record ſhall be delivered to *B. R.* and Judgment there upon the Demurrer, as well as upon the Iſſue. *R.* 2 *Sand.* 23. *Eq. Abr.* 128. *R. in Cha. Eq. Abr.* 129.

If the Record be delivered by the Clerk of the Petty-Bag, it will be well removed; for that may be ſaid to be *propria Manu* of the Chancellor, which is done by his Officer. *R. Mich.* 1700. *Eq. Abr.* 128, 9.

Upon a Judgment in *Chancery*, Error lies in *B. R.* 4 *Inſt.* 80. *Dy.* 315.

But the Lord Keeper ſaid, he would award an Injunction upon ſuch a Writ of Error. 1 *Ver.* 131.

But a Miſpleading in Form there will not be prejudicial in any Caſe, altho' it be in a Matter where the Court of Chancery holds Plea according to the Common Law. 1 *Rol.* 372. *l.* 45.

(C. 2.) Extraordinary Juriſdiction.—Court of Equity.

Vide Poſt, (3. X.)

The Court of Equity is not a Court of Record. 4 *Inſt.* 84. 37 *H.* 6. 14. *b.* *Yelv.* 227.

The Proceeding there is by Engliſh Bill. 4 *Inſt.* 84.

And it has Juriſdiction properly in three Caſes, *viz.* In Matters of Fraud. 1 *Rol.* 374. *l.* 10. *Vide Poſt*, (3 F. 1.—3 M. 1.)

In Caſe of Accident. 1 *Rol.* 374. *l.* 10. *Vide Poſt*, (Z.)

In Matters of Truſt, or Confidence. 1 *Rol.* 374. *l.* 10. *Vide Poſt*, (4 W. 1.)

But *Chancery* does not aid contrary to a Maxim in Law, unleſs in Caſe of a Fraud, *&c.* 1 *Rol.* 375. *Q. R.* *Vide Poſt*, (3 F. 8.)

Nor contrary to a Statute. 1 *Rol.* 378. *S.* *Vide Poſt*, (3 F. 7.)

Tho' the Party was ignorant, that his Act would have ſuch an Effect in Law. 1 *Rol.* 374. *l.* 21.

(D) Proceſs.

(D. 1.) *Subpœna.*

IF a Man commences a Suit in Equity, the firſt Proceſs is a *Subpœna*, introduced in the Time of *R.* 2. *Seld.* 6 *Vol.* 1544.

Which may be returnable on a Day certain, as *die Jovis prox' poſt quinden' Paſchæ.*

Or, on a common Return Day, as *die Paſchæ prox' futur' in unum menſem.*

If *Eaſter* be paſſed, it ſhall be *die Paſchæ in unum menſem prox' futur'.* *Vide Practical Regiſter in Chancery* 340.

It may be returnable in the Mayor's Court. 1 *Ver.* 406.

Or in the *Chancery* in *Ireland*; but then no Attachment iſſues here for a Contempt. 1 *Ver.* 406, 420.

A *Subpæna* may be ſued before a Bill filed. *Ord. per Clarendon. Vide Rules and Orders of Chancery* 94.—*Cont.* by the St. 4 & 5 *Ann.* 16. except to ſtay Waſte, or Suits at Law.

The Charge for one or two Defendants is 2*s.* 6*d.* at the *Subpæna*-Office; for three or more Defendants 3*s.*

By the St. 15 *H.* 6. 4. A *Subpæna* ſhall not be granted, till Surety found to ſatisfy the Party grieved, his Damages and Expences, if the Matter of the Bill be not made good.

Proceſs for Contempt ought to be ſued in the County, where the Party reſides. *Per Ord.* 7 *Car.* 1. 1 *Ch. R.* 56. *Vide Rules and Orders of Chancery* 11.

The *Subpæna* ought to be ſerved before the Return.

Or before Noon, or the Riſing of the Court on the Day of the Return. *Vide Practical Regiſter in Chancery* 343.

A *Subpæna* is well ſerved, when the Plaintiff or another ſhews the Writ to the Defendant, and leaves it with him. *Vide Practical Regiſter in Chancery* 341.

Or leaves the Label, or a Note containing the Day of Appearance; for if there are ſeveral Defendants, ſuch Label, or Note is left with the firſt, the Writ with the laſt. *Vide Practical Regiſter* 341, 2. *Vide Rules and Orders in Chancery* 96.

Or leaves ſuch Writ, (but it is a Doubt when he leaves only the Label, or Note,) with any of the Family at the Houſe of the Defendant. *Vide Practical Regiſter in Chancery* 341, 2. *Vide Rules and Orders of Chancery* 96.

Or leaves it at the Houſe of his uſual Reſidence, or puts it in at the Window, when the Defendant abſconds. *Vide Practical Regiſter in Chancery* 342. *Vide Rules and Orders of Chancery* 96.

By an Order in the *Exchequer*, a *Subpæna* to anſwer, rejoin, or hear Judgment, ought to be ſerved perſonally, or left at the Dwelling-Houſe or Reſidence of the Defendant, with one of the Family; or the Writ under Seal ſhall be ſhewn to ſuch one of the Family, and a Ticket left with him, containing the Effect of the Writ; and, in a *Subpæna* to anſwer, ſhall be written in the Exchequer Hand in Parchment. *Vide Rules and Orders in the Exchequer* 1 *Rule* 1.

If there are two Defendants, who ſue the Plaintiff in a foreign Court, and one of them is beyond Sea; Service upon the other within the Realm, is good for him. *Ordered upon Motion. Ca. Ch.* 67.

[Service on an Agent formerly a Partner, ordered to be good Service on a Defendant abroad. *Carrington* v. *Cantillon*, *P.* 1722. *Bunb.* 107.]

When a Defendant was beyond Sea, a *Subpæna ad audiendum Judicium* was ſerved upon the Clerk in Court, by Order of the Court upon Motion.

If a Man ſues a *Feme Covert*, a *Subpæna* ſhall go againſt the Huſband and Wife.

Except where the Huſband is out of the Kingdom, or other ſpecial Cauſe.

If the *Subpæna* be ſhewn to the Huſband, with Notice that it is alſo againſt his Wife, it is ſufficient for both. *Vide Practical Regiſter in Chancery* 343.

[If a Mother ſecretes Infants, Parties, Service on her is ſufficient. *Smith* v. *Marſhal*, *M.* 1740. 2 *Atkyns* 70.]

But ſhewing the Writ, without leaving it, or the Label or Note, is not ſufficient, except where the Defendant refuſes it. *Vide Practical Regiſter in Chancery* 343.

A *Subpæna* for Coſts muſt be ſerved upon the Perſon; for the Coſts ought to be demanded. *Vide Ord. per Cla. Rules and Orders of Chancery* 95. *Vide Practical Regiſter in Chancery* 344.

But upon *Affidavit*, that the Perſon cannot be found, the Court, upon Motion or Petition, will order a Service upon the Clerk in Court. *Vide Ord. per Cla. Rules and Orders of Chancery* 95. *Vide Practical Regiſter in Chancery* 344.

[If Defendant, nor his Clerk in Court, nor any attending at his Office can be found, the Court may order Service of *Subpæna* to hear Judgment to be good, on Defendant's Solicitor (tho' he knows not where Defendant is) with Copy of the Order at Defendant's laſt Abode. *Anon. T.* 1750. 2 *Vezey* 23.]

Yet, tho' the Service be not ſufficient for an Attachment, it may be ſufficient for Coſts, if the Defendant takes Notice of it, and the Plaintiff does not file his Bill. *Vide Practical Regiſter in Chancery* 343.

A Counterfeit *Subpœna* does not oblige. *Vide Practical Regiſter in Chancery* 17.

And whoever ſerves it, if he knows it, miſbehaves himſelf, and an Attachment goes againſt him.

So he, who ſerves a *Subpœna* upon a different Perſon, unleſs it be by Miſtake.

Or miſbehaves himſelf in the Service. *Vide Practical Regiſter in Chancery* 99.

Or abuſes, or is guilty of a Contempt on him who ſerves it. *Vide Practical Regiſter in Chancery* 99.

[If the Miniſter of a Pariſh prevents an Order for Defendant's Appearance, being publiſhed purſuant to 5 *G.* 2. *c.* 25. he may be indicted. *Burton* v. *Mattons*, *M.* 1740. 2 *Atkyns* 114.]

If the Plaintiff does not proceed in the Cauſe for a Year, he ought to have another *Subpœna ad faciendum Attornatum*. 1 *Ver.* 172. *Vide Practical Regiſter in Chancery* 350.

A *Subpœna* iſſues for various Cauſes; as, *Ad Reſpondendum*. *Vide* the Form. *Weſt. Chan. Sect.* 21. *Vide Practical Regiſter in Chancery* 339.

Ad teſtificandum at the Aſſizes, or upon a Commiſſion, *&c.* *Weſt. S.* 34, 42, 49, *&c.* *Vide Practical Regiſter in Chancery* 347.

For Coſts. *Weſt. S.* 21. *Vide Practical Regiſter in Chancery* 344. *Vide Rules and Orders of Chancery* 95.

For the Delivering or Producing of Evidences, or other Writings. *Weſt. S.* 44, 5. *Vide Practical Regiſter in Chancery* 346.

Ad rejungendum, or *Ad audiendum Judicium*. *Vide Practical Regiſter in Chancery* 346, 349. *Vide Rules and Orders of Chancery* 94, 5. *Vide Weſt. S.* 30, 37.

The Penalty of 100*l.* in the *Subpœna* mentioned, is only *in Terrorem*, and ſhall not be levied, tho' the Defendant does not appear. 10 *H.* 7. 4, 5.

(D. 2.) Letter to a Peer.

If the Defendant be a Peer, a *Subpœna* does not go, but a Letter from the Chancellor, requiring him to take a Copy of the Bill, and to anſwer at ſuch a Day. *Weſt. S.* 21. 2 *Vent.* 342. *Vide Practical Regiſter in Chancery* 341.

[It gives the Party ſuing it out, Priority of Suit. *Price* v. *Ld. Coningſby*, *H.* 1722. *Bunb.* 124.]

But if he does not anſwer upon the Letter, then a *Subpœna* ſhall iſſue. 2 *Vent.* 342. *Vide Practical Regiſter in Chancery* 341.

If he do not appear upon the *Subpœna*, then an Order ſhall be awarded to ſhew Cauſe why a Sequeſtration ſhould not go. 2 *Vent.* 342.

And, if no Cauſe be ſhewn, a Sequeſtration goes. 2 *Vent.* 342.

So by the St. 12 & 13 *W.* 3. 3. Proceſs againſt a Peer, or Member, *&c.* during Time of Privilege, ſhall be by Letter, or *Subpœna*, as uſual, and on leaving a Copy of the Bill at the Defendant's Houſe, or laſt Place of Abode, if he do not appear, or anſwer, or perform not the Order, Decree, *&c.* a Sequeſtration of Real and Perſonal Eſtate ſhall go, as in Caſe of a Peer before.

But no Proceſs for a Contempt ſhall iſſue againſt a Peer. 2 *Vent.* 342.

And therefore an Attachment does not go. *Seld.* 6 *Rol.* 1543.

(D. 3.) Attachment.

If the Defendant does not appear at the Return of the *Subpœna*, and the Bill be filed, the Plaintiff, upon an *Affidavit*, poſitive and certain of the Time and Place of Service, and of the Time of the Return, ſhall have an Attachment. *Vide Practical Regiſter in Chancery* 20.

If the *Affidavit* be filed before the Return of the Attachment, it is ſufficient. 1 *Ver.* 172.

But an Attachment ſhall not be prayed till the Day after Coſts Day. *Vide Practical Regiſter in Chancery* 8.

And

And the *Affidavit* ought to ſhew, that the Service, being within *London*, or twenty Miles Diſtance, was above four Days paſt excluſive. *Vide Practical Regiſter in Chancery* 20.

If beyond twenty Miles Diſtance, that it was above eight Days. *Vide Practical Regiſter in Chancery* 20.

And that he ſerved the *Subpœna*, or ſaw the Service of it. *Vide Practical Regiſter in Chancery* 342.

Or, that the Defendant confeſſed himſelf to have been ſerved. *Vide Practical Regiſter in Chancery* 342.

[In all Caſes of Commitment, there muſt be an Affidavit of Service; a Recital in an Order for Time obtained by the Offender is not ſufficient. *Whitbed* v. *Thiſtlethwaite*, *H.* 1747. 3 *Atkyns* 619.]

By an Order in the *Exchequer*, an Attachment goes, if the Defendant does not appear the next Day after Service, where the Proceſs is returnable *immediatè*, upon the ſecond Day after, if returnable at a Day certain, and upon the fourth Day after, if upon a Common Return. *Vide Rules and Orders in the Exchequer* 2. *Rule* 4.

If the Huſband appears, and not his Wife, an Attachment goes againſt both. *Vide Practical Regiſter in Chancery* 18. 343.

The Attachment requires the Defendant to anſwer for the Contempt, as well as to the Matters objected. *V. Weſt. S.* 22. *Vide Practical Regiſter in Chancery* 20.

And it lies for any Contempt; As, for not anſwering, or for anſwering inſufficiently.

[If a Huſband, by Menaces prevails with his Wife to put in an Anſwer contrary to her Belief, it is a Contempt. *Ex parte Halſam*, *T.* 1740. 2 *Atkyns* 50.]

[On an inſufficient *further* Anſwer, you take up your Proceſs of Contempt, juſt where you left off. *Child* v. *Brabſon*, *M.* 1750. 2 *Vezey*.

For Refuſal to obey an Order or Decree.

[If a Defendant attends the hearing of a Cauſe, and is preſent when the Decree is pronounced, and does any Act in Contravention to it, he is guilty of Contempt, and ſhall be puniſhed for it, tho' the Decree is not drawn up. *Skip* v. *Harwood*, *T.* 1747. 3 *Atkyns* 564.]

[Diſobedience to an Injunction is a Contempt, tho' it is not ſealed. *Anon.* *T.* 1747. 3 *Atkyns* 567.]

For abuſive Uſage or Words, of the Proceſs, or Officers of the Court.

If upon a Copy ſerved, and the Writ ſhewn, the Perſon ſpeaks with Contempt, before he knows the Contents, or from what Court it iſſued, it will be a Contempt. *R. Mod. Ca.* 43.

For the Revocation of a Submiſſion to an Award made in Court by Conſent. 1 *Ca. Ch.* 185.

For not performing an Award made upon a Reference by Rule of Court. *Vide Arbitrament*, (D. 1.)

And where the Contempt is by abuſive Words againſt the Proceſs of the Court, an Attachment goes without an Hearing. 1 *Sal.* 84.

If the Contempt be confeſſed, or proved, it ſhall be referred to the Maſter to tax the Coſts of the Proſecutor; and the Party offending ſhall be committed till he pays them, and gives Satisfaction to the Court for the Miſdemeanor. *Rules and Orders in Exchequer* 16. *Rule* 40.

But if the Maſter be in Doubt what Report to make, he may be afterwards examined upon Interrogatories. *Per Cur P.* 2 *Anne*.

If the Contempt be by abuſive Actions, the Offender ſhall be committed upon an *Affidavit*, without other Examination. *Ord. per Cla. Rules and Orders of Chancery* 116.

As, by beating, *&c.* the Perſon who ſerves the Proceſs. *Ord. per Cla. Rules and Orders of Chancery* 116.—So in the *Exchequer*. *Rules and Orders in Exchequer* 16. *Rule* 40.

If, by contemptuous Words, he ſhall be committed upon two *Affidavits*, without other Examination. *Ord. per Cla. Rules and Orders of Chancery* 116. —So in the *Exchequer*. *Rules and Orders in Exchequer* 16. *Rule* 40.

And one *Affidavit* is ſufficient to have an Attachment, upon which he ſhall be

be discharged, if there be no more Proof, and the Contempt be denied; but he shall not have his Costs in respect of this *Affidavit*. *Ord. per Cla. Rules and Orders of Chancery* 116.—So in the *Exchequer*. *Rules and Orders in Exchequer* 16. *Rule* 40.

[There must be the Oaths of two Persons of contemptuous Words, or beating a Person serving Process, for the Court to order Commitment; on the Oath of one, they will only make Order to shew Cause. *Anon. T.* 1745. 3 *Atkyns* 219.]

In *B. R.* Interrogatories shall be exhibited in four Days, or the Party shall be discharged. *Mod. Ca.* 73.

If the Contempt be apparent, he shall answer in Custody. *Mod. Ca.* 73.

Otherwise, upon a Recognisance. *Mod. Ca.* 73.

And if he denies upon the Interrogatories, he shall be discharged, tho' he may be indicted for Perjury. *Mod. Ca.* 73.

If the Defendant be taken for a Contempt, he shall appear *De die in diem* in the Register's Office to be examined upon Interrogatories. *Vide Post*, (D. 6.) *Vide Practical Register in Chancery* 101.

And this, upon Motion, is referred to a Master; but it is usually done by the Examiner. *Vide Practical Register in Chancery* 102, 3.

If the Defendant comes in *gratis*, he shall give Notice of his Appearance to the Clerk on the other Side. *Vide Practical Register in Chancery* 103.

And if Interrogatories are not framed within eight Days, he shall be discharged, with Costs to be taxed by a Master.

So if, being examined, there shall be no Reference of the Examination, nor Commission taken on the other Side, nor Witnesses examined for Proof of the Contempt, within a Month. *Vide Practical Register in Chancery* 103.

If the Interrogatories go to Matter not contained in the *Affidavit*, or Order, the Defendant may demur, or refuse to answer to them. *Ord. per Cla. Rules and Orders of Chancery* 114.

And if the Contempt be not proved, the Defendant shall be discharged upon Motion, with Costs.

If the Contempt be by abusive Words, *&c.* he may be committed directly.

[Chancery has no Cognizance of a Libel, unless it is a Contempt of the Court. *Read* v. *Huggonson*, *M.* 1742. 2 *Atkyns* 469.

Initial Letters, or even figured Names, if the Meaning be apparent, will not protect a Libeller. *Ibid.*

It is no Excuse for a Printer to say, he had no Knowledge of the Contents of a Libel. *Ibid.*

If the Printer discovers the Person who brought the Libel to him, it is a Mitigation of his Offence. *Ibid.*

There are three Sorts of Contempt; scandalizing the Court itself, abusing Parties concerned in Causes here, and prejudicing Mankind before the Cause is heard; thus printing a Brief before the Cause was heard, was deemed a Contempt in Capt. *Parry's* Case, as prejudicing the World with Regard to the Merits. *Ibid.*

Read was ordered to be committed, and *Huggonson*, already a Prisoner, to be taken into close Custody, for printing Reflections on the Parties in the Cause of *Roach* v. *Hall*, tho' they spoke of the Court with Respect. *Ibid.*]

[If the Printer of a News-Paper inserts a Paragraph, tending to prepossess the Minds of People, as to the Proceedings in this Court, it will commit him for Contempt. *Anon.* Case of Mrs. *Farley*, Printer of *Bristol* Journal, for an Advertisement relating to Sir *Robert Cann*'s Answer, *T.* 1754. 2 *Vezey* 520.]

[On submission, payment of Costs, and confessing the Author, the Court will discharge him. *Ibid.*]

[Printing an Order of Court, appointing a Receiver, and reciting the material Facts in the Cause, and distributing it among the Tenants, merely to prevent their paying their Rents improperly, till a Receiver was appointed, is not a Contempt, but not a Practice to be approved. *Baker* v. *Hart*, *M.* 1742. 2 *Atkyns* 488.]

So, if after Appearance, he departs without Examination, upon Motion and Certificate of the Departure, and of the Interrogatories. *Rules and Orders of Chancery* 113. *Vide Practical Register in Chancery* 103.

So, if he be found in Contempt. *Ord. per Cla. Rules and Orders of Chancery* 113.

The Regiſter ſhall give the Certificate of the Departure, the Examiner, that Interrogatories are exhibited. *Vide Rules and Orders of Chancery* 113. *Vide Practical Regiſter in Chancery* 103.

And he ſhall not be diſcharged, until he performs the Order and pays the Coſts; and tho' he be cleared, he ſhall not have Coſts. *Ord. per Cla. Rules and Orders of Chancery* 113. *Vide Practical Regiſter in Chancery* 104.

The Maſter, upon the Reference of the Examination, or Proof of the Contempt before him, ſhall certify, without more, the Coſts to be paid of either Party. *Ord. per Cla. Rules and Orders of Chancery* 115. *Vide Practical Regiſter in Chancery* 106.

If the Contempt be denied, or be not apparent upon the Examination, the Proſecutor ſhall have a Commiſſion of Courſe; but the Defendant ſhall have one Commiſſioner, and croſs examine the Witneſſes. *Ord. per Cla. Rules and Orders of Chancery* 114. *Vide Practical Regiſter in Chancery* 104.

But he cannot examine the Witneſſes, but by Leave of the Court upon ſpecial Points, which the Plaintiff may croſs examine. *Ord. per Cla. Rules and Orders of Chancery* 114. *Vide Practical Regiſter in Chancery* 104.

[In great Contempts the Court will give Leave to examine Witneſſes, to falſify the Parties Examination, and to the Party to examine Witneſſes, to fortify his Denial of the Contempt. *Wilkins* v. *Edſon*, *M.* 1727. *Bunb.* 244.]

If the Contemptors are aged, Servants, *&c.* a Commiſſion ſhall go into the Country, at the Charge of him who prays it, to be executed when, and where the Six Clerk, not in the Cauſe, upon hearing of the Clerks on both Sides, ſhall appoint. *Ord. per Cla. Rules and Orders of Chancery* 115. *Vide Practical Regiſter in Chancery* 105.

An Attachment, and all Proceſs for Contempt, ſhall be made out into the County where the Party is reſident; if he reſides in *London*, it ſhall be directed to the Sheriffs there. *Ord. per Cla. Vide Rules and Orders of Chancery* 112. *Vide Practical Regiſter in Chancery* 111.

Whoever ſues any Proceſs for a Contempt, ought to endeavour the Execution of it; otherwiſe he ſhall loſe the Benefit of it, and pay Coſts. *Ord. per Cla. Rules and Orders of Chancery* 112, 113. *Vide Practical Regiſter in Chancery* 112.

The Court will diſcharge an Attachment or other Proceſs of Contempt, when it iſſues irregularly, with Coſts to be taxed by the Six Clerks, witho t Motion. *Ord. per Cla. Rules and Orders of Chancery* 112, 113. *Vide Practical Regiſter in Chancery* 111.

But the Defendant ought to pay the Coſts of the Proceſs, which iſſued regularly, firſt. *Ord. per Cla. Rules and Orders of Chancery* 112. *Vide Practical Regiſter in Chancery* 111.

If the Sheriff do not return the Attachment, a Day ſhall be given for it. *Vide Practical Regiſter in Chancery* 110, 111, 334.

And, if he do not make a Return on ſuch Day, he ſhall be amerced. *Vide Practical Regiſter in Chancery* 110, 111, 334.

So, if he make a falſe Return. *Vide Practical Regiſter in Chancery* 334.

So, in the *Exchequer*, he ſhall be amerced 40*s.* if he does not return it by the Sealing Day, upon a Rule given the laſt Day of the Term. *Rules and Orders in Exchequer* 17. *Rule* 46.

So, if a Sheriff or Under-Sheriff be ſerved with a Copy of an Order under the Seal of the Court; upon *Affidavit* thereof, and a Warrant from a Baron, he ſhall be in Contempt. *Rules and Orders in Exchequer* 17. *Rule* 44.

The Plaintiff pays 2*s.* 10*d.* for the Attachment; To the Sheriff 2*s.* 4*d.* and for the Return 4*d.*

If the King dies after the Arreſt upon an Attachment, and then the Sheriff returns *Cepi Corpus*, it will be well, and the ſubſequent Proceſs upon it regular. 1 *Ver.* 400.

If the Sheriff returns *Cepi Corpus*, a Meſſenger ſhall be ſent for the Defendant. 1 *Ver.* 116, 154, 344, 400.

But this is a new Officer ſubordinate to the Serjeant at Arms. 1 *Ver.* 344.

And the proper Courſe, after a *Cepi Corpus* returned, is a Motion, that the Defendant enter his Appearance and be examined within four Days, otherwiſe that he may ſtand committed; for after a *Cepi Corpus*, no other Proceſs of Contempt iſſues. 1 *Ver.* 344.

If, after an Arreſt upon an Attachment, and a *Cepi Corpus* returned, the Defendant eſcapes out of the Kingdom, a Serjeant at Arms ſhall be granted, and, upon Return, a Sequeſtration. 1 *Ver.* 344.

If the Defendant appears, being perſonally ſerved, upon the Attachment, and files his Anſwer, or Demurrer, the Attachment ſhall be diſcharged of Courſe, on Payment of 20*s.* Coſts, or Tender and Refuſal. *Ord. per Cla.* But ſaid, that he ſhall not be diſcharged without Motion or Petition. *Ord. per Cla. Rules and Orders of Chancery* 113. *Vide Practical Regiſter in Chancery* 112.

Upon Payment of 10*s.* if the *Subpœna* was not ſerved upon the Perſon.

[If Defendant is in Cuſtody for want of Anſwer, anſwers, is diſcharged, Anſwer reported inſufficient, taken again, anſwers again; he ſhall be diſcharged on Payment of Coſts of Contempt, without ſtaying in Cuſtody till the Maſter reports whether the Anſwer is ſufficient or not. *Child* v. *Brabſon*, *M.* 1750. 2 *Vezey*.]

And if the Plaintiff ſues other Proceſs, after Tender of the Coſts, the Defendant ſhall be diſcharged with Coſts. *Ord. per Cla. Rules and Orders of Chancery* 113. *Vide Practical Regiſter in Chancery* 112.

If the Contempt be pardoned, the Defendant may appear and proceed, as if there had been no Proceſs. *Ca. Ch.* 238.

If the Defendant be taken on the Attachment, he ſhall be bailed. *Vide Practical Regiſter in Chancery* 110.

[If the Sheriff takes Bail-Bond for the Appearance of a Perſon in Cuſtody on Attachment, and delivers it to Plaintiff, this is good Cauſe on a Rule why he does not bring in the Body: And Plaintiff may have a Meſſenger into any County where the Perſon is. *Anon. H.* 1742. 2 *Atkyns* 507.]

And the Attachment may be ſuperſeded.

Or, if it be irregularly obtained, it ſhall be diſcharged upon Motion.

[If a Solicitor has been negligent in managing his Client's Buſineſs, the Court may grant an Attachment againſt him. *Floyde* v. *Nangle*, *T.* 1747. 3 *Atkyns* 568.]

(D. 4.) Attachment with Proclamation.

If the Defendant be not taken, or does not appear upon the Attachment, the Plaintiff ſhall have an Attachment with Proclamation. *Vide Practical Regiſter in Chancery* 101, 296.

The Charge to the Office is 2*s.* 10*d.* To the Sheriff 2*s.* 4*d.* For the Return 4*d.*

So, by Order in the *Exchequer*, if the Defendant does not appear upon the Return of the Attachment. *Vide Rules and Orders in Exchequer* 2. *Rule* 5.

If the Defendant be arreſted upon a Proclamation, a Commiſſion of Rebellion, or by a Serjeant at Arms, where the firſt Proceſs was not duly executed, the Plaintiff ſhall pay Coſts. *Per Order* 7 *Car.* 1. 1 *Ch. R.* 57. *Vide Rules and Orders of Chancery* 12. *Vide Practical Regiſter in Chancery* 112.

If the Defendant appear upon the Proclamation, and file his Anſwer, Plea, or Demurrer, he ſhall be diſcharged upon Payment of Coſts, double to the Coſts upon an Attachment, without Motion and if the Plaintiff afterwards proceed he ſhall pay Coſts.

If the Defendant be taken, he ſhall be committed to the Fleet. *Vide Practical Regiſter in Chancery* 101.

(D. 5.) Commiſſion of Rebellion.

If the Defendant be not taken, or does not appear upon the Proclamation, the Plaintiff ſhall have a Commiſſion of Rebellion. *Vide* the Form, *Weſt* S. 24. *Vide Practical Regiſter in Chancery* 94, 101.——So by Order in the *Exchequer*. *Vide Rules and Orders in the Exchequer* 2. *Rule* 5. 19. *Rule* 51.

This Commiſſion ſhall be directed to the Sheriff. *Vide Practical Regiſter in Chancery* 94.

Or, to ſpecial Commiſſioners named by the Plaintiff. *Vide Weſt*. S. 23, 4 *Vide Practical Regiſter in Chancery* 94.

If the Commiſſioners permit the Defendant to eſcape, they may be committed till they produce him. *Vide Practical Regiſter in Chancery* 95.

If the Eſcape be with their Conſent, till they pay the Debt. *Vide Practical Regiſter in Chancery* 95.

If the Defendant be reſcued, the Reſcuers may be committed. *Vide Practical Regiſter in Chancery* 95.

If *A.* ſays that he is the Perſon named in the Writ or Commiſſion againſt *B.* by which Means the Commiſſioners take him, an Attachment lies againſt him *Semb. Hard.* 323.

But, if the Commiſſioners take a wrong Perſon, an Action lies againſt them for the falſe Impriſonment. *Hard.* 323.

Tho' he acknowledge himſelf to be the Perſon. *Hard.* 323.

If the Commiſſioners take the Defendant they may bail him, or not, at their Diſcretion. 1 *Ch. R.* 261, 2, *Vide Practical Regiſter in Chancery* 95.

If they refuſe Bail, they ought to bring him up to the Court directly, without Delay. 1 *Ch. R.* 262. *Vide Practical Regiſter in Chancery* 95.

[On the common Proceſs of the Court, the Commiſſioners ought to take Bond for Defendant's Appearance, but on Attachment for Contempt they ought not, but to have the Body in Court at the Return. *Jones* v. *Clement in Sc'. M.* 1719. *Bunb.*]

And a Bailiff, who acted contrary, was committed for the Contempt, and paid Coſts to the Defendant. 1 *Ch. R.* 262.

If the Defendant be taken upon a Commiſſion of Rebellion, which iſſued irregularly, the Defendant ſhall have Coſts. 1 *Ver.* 269.

But, if an Action at Law be brought, an Injunction goes; for it ought to be examined in *Chancery*. *R.* 1. *Ver.* 269.

(D. 6.) Serjeant at Arms.

If the Defendant be not taken upon the Commiſſion, a Serjeant at Arms ſhall be ſent for him. *Vide Practical Regiſter in Chancery* 101, 332.

By an Order in the *Exchequer*, if the Defendant does not appear upon the Return of the Commiſſion of Rebellion, there ſhall be ſuch other Proceedings, as the Court upon Motion ſhall direct. *Rules and Orders in Exchequer* 2. *Rule* 5.

If he appears, all Coſts for the Contempt ſhall be paid, before any other Proceeding on his Part ſhall be allowed; as 10*s.* for every Perſon named in the Attachment, for every one in the Proclamation 20*s.* for every one in the Commiſſion of Rebellion 2*l.* 13*s.* 4*d.* *Vide Rules and Orders in Exchequer* 2. *Rule* 5. 19. *Rule* 51.

And all Coſts ſhall be paid in Court by the Plaintiff or Defendant, or their reſpective Attorney, before Appearance or Anſwer. *Vide Rules and Orders in Exchequer* 3. *Rule* 5.

If the Sheriff returns *Cepi*, and the Defendant is not brought into Court, upon a Rule of four Days, upon Motion a Meſſenger ſhall be ſent for the Defendant. *Vide Rules and Orders in Exchequer* 3. *Rule* 5.

By an Order in the *Exchequer*, upon Proceſs of Contempt in *London* or *Middleſex*, there ſhall be ſix Days between the *Teſte* and the Return; in other Counties

Counties within ſixty Miles, ten Days; in all others, fifteen Days, if the Court does not direct Proceſs returnable *immediate*. *Vide Rules and Orders in Exchequer* 3. *Rule* 5,

If there be a Debate, whether the Proceſs for the Contempt was ſerved, there may be a Commiſſion for the examining it. 2 *Ca. Ch.* 100.

If the Defendant appears and pays Coſts for his Contempt, and afterwards is again in Contempt for not making a ſufficient Anſwer, the Proceſs of Contempt continues againſt him; but when he pays for all Contempts, there ſhall be a Deduction of ſo much as he paid upon the former Contempts. *Vide Rules and Orders in Exchequer* 7. *Rule* 16.

Proceſs of Contempt continues, and does not begin again *de novo*. *Per Rule of North. Ca. Ch.* 238.

If the Defendant be in Cuſtody for his Contempt he ſhall be brought to the Court upon a *Habeas Corpus*, and charged with the Bill; if he does not then anſwer, he ſhall be a ſecond Time brought to the Court by *Habeas Corpus*, and charged with the Bill, or by Rule of Court; and if ſtill he does not anſwer, the Bill ſhall be taken *pro confeſſo*. *Vide Rules and Orders in Exchequer* 8. *Rule* 18.

If a Perſon in Contempt be put to anſwer upon Interrogatories, to excuſe his Contempt, he ſhall be committed to the Fleet, unleſs he gives a Recognizance in 100*l.* or more if the Caſe requires it) to appear *de Die in Diem* to be examined, and not to depart without Licence of the Court, *Rules and Orders in Exchequer* 15. *Rule* 38.

If upon Examination he denies the Contempt, or it does not appear; if the Court, upon Motion, be informed of a Fact that can demonſtrate it, the Proſecutor may examine Witneſſes to it, in Court, or by Commiſſion, upon Notice to the Defendant or his Attorney, who may croſs examine them. *Rules and Orders in Exchequer* 15. *Rule* 38.

If there be ſuch a Commiſſion, the Defendant ſhall have a Day to appear 'till the Return; and if it be not returned within a Week, after the Day for the he ſhall be diſmiſſed with Coſts, and his Recognizance ſhall be vacated. *Rules and Orders in Exchequer* 15. *Rule* 39.

If the Proſecutor does not exhibit Interrogatories within four Days after Appearance, the Defendant ſhall be diſmiſſed with Coſts. *Rules and Orders in Exchequer* 15. *Rule* 38.

If Proceſs of Contempt be not executed, it will abate by the Death of the King, and the Plaintiff ſhall begin *de novo*. 1 *Ver.* 300. *Vide Abatement, H.* 38.*

**Contra*, by the *St.* 1 *Ann* 8.

(D. 7.) Sequeſtration. *Vide Poſt.* (Y. 4)

If the Serjeant at Arms cannot take the Defendant, or if he eſcapes and perſiſts in his Contempt, a Sequeſtration ſhall be awarded for the Lands or Goods of the Defendant at the Time of his Contempt. *Vide Practical Regiſter in Chancery* 101, 329.

A Sequeſtration is the neceſſary Proceſs of the Court. *Ca. Ch.* 93. Tho' introduced by Lord *Bacon*. 1 *Ver.* 421.

And may be awarded againſt the Lands and Goods of the Defendant. *Ca. Ch.* 92.

But it ſhall not be granted upon Petition. *Ord. per Cla. Rules and Orders of Chancery* 123.

[Sequeſtrators, for want of Appearance, after Seizure of *ſome* goods, ought to apply to Court for further Directions for Seizure: Sequeſtrators, for want of Anſwer, have no Power to ſell, or even to remove Goods; and if they do, an Attachment may go againſt them. *Deſbrow* v. *Crommie, M.* 1729. *Bunb.* 272.]

If, before the Sequeſtration awarded, the Defendant have conveyed his Land by Covin, the Sequeſtration ſhall be awarded againſt the Defendant and his Aſſigns. 2 *Ca. Ch.* 44.

And the Perſon to whom the Land is aſſigned, may be taken upon the Sequeſtration. 2 *Ca. Ch.* 44.

So, if Land be ſettled, with a Power of Revocation, it will be ſubject to the Sequeſtration. 1 *Ca. Ch.* 242.

Tho'

Tho' the Decree was for Payment of Money, not for Land, and the Sequeſtration was for Land at the Time of the Decree. *Ca. Ch.* 242.

A Sequeſtration binds from the Time of awarding it, not of the Execution only. 1 *Ver.* 58.

If the Suit be for Land, a Sequeſtration ſhall be granted, and alſo an Injunction for the Profits, directed to the Sheriff, or other Commiſſioners ſpecially appointed. *Vide Practical Regiſter in Chancery* 329.

Where the Suit was againſt a Corporation for a Debt due in their Corporate Capacity, (and againſt particular Perſons of the ſame Corporation, againſt whom, upon Demurrer, the Bill was diſmiſſed,) and the Corporation did not appear; upon an Appeal to the Lords in Parliament from the Decree for the Diſmiſſion and the Anſwer, Plea and Demurrer of the particular Perſons, (but the Corporation, tho' ſummoned, did not appear) the Lords ordered, that the Bill, as to the Corporation, ſhould not be diſmiſſed, that the Court of Chancery ſhould award the uſual Proceſs, and, if needful, a *Diſtringas*, which ſhould be ſerved one Month before the Return, and if the Corporation did not appear, or did not anſwer, that the Bill ſhould be taken *pro Confeſſo*, and the Court of *Chancery* ſhould make a Decree accordingly. *Ca. Ch.* 206. *Vide* 1 *Ver.* 121, 122.

[A Defendant, Priſoner in the Country, for want of Appearance to a Bill of Revivor, cannot on his own Motion have the Bill taken *pro confeſſo* againſt him, but Plaintiff muſt purſue the Directions of 5 *G.* 2. *c.* 25. *Anon. M.* 1748. 3 *Atkyns* 690.]

If again, the Defendant appears, and afterwards does not anſwer, and all Proceſs of Contempt goes; the Bill ſhall be taken *pro Confeſſo*, and a Decree accordingly. *R.* 2 *Ca. Ch.* 173, 237. *Vide* 1 *Ver.* 247.

[If there is a Sequeſtration *Niſi*, againſt a Member of Parliament for want of Anſwer, and before it is made abſolute, Anſwer comes in, and is excepted to, the Court will enlarge him till it appears, whether Anſwer is ſufficient or not; or elſe will grant new Sequeſtration *Niſi*. *Butler* v. *Raſhfield*, *T.* 1751. 3 *Atkyns* 740.]

[If the Bill be taken *pro Confeſſo* for want of an Anſwer after Appearance, the Decree ſhall be *Niſi*. *Semb. ſed Q. Howell* v. *Lord Coningſby*, *M.* 1726. *Bunb.* 219.]

[If Defendant is brought up three Times, and does not put in any Anſwer, and the Bill is thereupon taken *pro Confeſſo*, he ſhall not be permitted afterwards to put in an Anſwer. *Hughes* v. *Owen*, *P.* 1731. *Bunb.* 299. *Q.* How this agrees with *Howell* v. *Ld. Coningſby*, *ſupra*.]

If Proceſs goes againſt one Defendant to a Sequeſtration, the Plaintiff ſhall afterwards proceed againſt the others, tho' jointly concerned, without him who was ſued to a Sequeſtration, as when one Defendant is outlawed at Common Law. 2 *Ca. Ch.* 139.

[If one Defendant is out of the Kingdom, it is in vain to take out Proceſs, and it is the ſame Thing as if Proceſs had been taken out for want of Appearance, and carried on to a Sequeſtration. *Darwent* v. *Walton*, *H.* 1742. 2 *Atkyns* 510.]

If after a Sequeſtration the Goods are embeziled by a Stranger, he ſhall be examined for his Contempt. 2 *Ca. Ch.* 82.

But a Decree in *Chancery* does not bind the Right of the Land, but only the Perſon, if he does not obey it. 1 *Rol.* 373. *l.* 25. 4 *Inſt.* 84.

And if the Bill be againſt Huſband and Wife, and the Wife appears without the Privity of the Huſband, the Bill ſhall not be taken *pro Conjeſſo*. 1 *Ver.* 247.

And therefore, the Court cannot impoſe a Fine for Non-performance of a Decree. *R.* 4 *Inſt.* 84.

Nor decree Damages for not delivering Poſſeſſion. *R.* 3 *Bul.* 34.

Yet there may be a Decree for quieting the Poſſeſſion. *R.* 3 *Bul.* 34.

So a Sequeſtration in meſne Proceſs determines by the Death of the Party. 1 *Ver.* 58.—If it be for a perſonal Duty. 1 *Ver.* 166.—Otherwiſe, if it be after a Decree. 1 *Ver.* 58. [*Hawkins* v. *Crook*, *M.* 1747. 3 *Atkyns* 594.]

So a Sequeſtration upon a Bill, for a perſonal Duty, does not avoid the Dower of the Wife, tho' the Sequeſtration was before Marriage. *R.* 1 *Ver.* 118.

So Sequeſtrators upon meſne Proceſs account for the Profits, and retain only for Satisfaction of the Contempt. 1 *Ver.* 247, 8.

[If a Defendant ſtands out to a Sequeſtration for want of Anſwer, and the Bill is taken *pro Confeſſo*, and a Decree *ad Computandum*, the Court will not diſcharge the Sequeſtration on paying Coſts of the Contempt, but keep it on Foot as a Security for his appearing before the Maſter. *Maynard* v. *Pomfret*, *H.* 1746. 3 *Atkyns* 468.]

[The Court will not make an Order on a Plaintiff to pay his Sequeſtrator's Fees, who has made no Return of the Goods ſequeſtred, but has delivered them over many Years before, and made no Demand on Plaintiff ſince. *Hawkins* v. *Crook*, *M.* 1747. 3 *Atkyns* 594.]

[If Plaintiff calls for Account of Goods ſequeſtred, the Sequeſtrator may ſet off his Fees, whatever Length of Time has elapſed without Demand, provided he has made a Return from Time to Time, of what he ſeized. *Ibid.*]

(D. 8.) Injunction.

(D. 8.) The Force of it.

An Injunction out of *Chancery* cannot ſuperſede the Proceedings of *B. R.* *Vide* 37 *H.* 6. 13, 14.

And therefore, the Court will give Judgment, if it be prayed, notwithſtanding an Injunction. *R.* 22 *Ed.* 4. 37. *b.*

And if the Injunction be not upon the Attorney, he may pray it. *Dict.* 22 *Ed.* 4. 37. *b.*

But if a Perſon, ſerved with an Injunction, afterwards proceeds at Common Law, it is a Contempt to the *Chancery*, and he will be committed. *Semb.* 22 *Ed.* 4. 37. Yet there it was ſaid *per Huſſey*, that *B. R.* would grant a *Habeas Corpus*, and diſmiſs him.

It ſhall be ſerved in the ſame Manner as a *Subpæna*. *Vide Practical Regiſter in Chancery* 197.

And if, after Service it ſhall be diſobeyed, all Proceſs for Contempt iſſues, 'till the Offender be taken and committed upon an *Affidavit* of his Diſobedience. *Vide Practical Regiſter in Chancery* 217.

And when he is taken he ſhall be committed, 'till he obeys, or gives Security for his Obedience, and ſhall not be heard in the principal Caſe, until he obeys. *Vide Practical Regiſter in Chancery* 217.

If Execution be taken out, after an Injunction, the Party ſhall make Reſtitution for all Damage that appears to be done to the Plaintiff by his *Affidavit*. 1 *Ver.* 207.

No one ſhall be reſtrained by an Injunction, if he be not named.

But if it be ſerved upon the Attorney, *&c.* and the Defendant afterwards proceeds himſelf, he will be in Contempt.

And, if a Man diſobeys an Injunction, he will be in Contempt, tho' it was not regularly obtained. 2 *Ca. Ch.* 204.

And, tho' the Party would not permit him to have the Writ, to examine it with the Copy ſerved. *Semb.* 2 *Ca. Ch.* 204.

An Injunction may be by *Parol*, to one preſent in Court. *Vide Practical Regiſter in Chancery* 197.

Or it ſhall be in Writing. *Vide Practical Regiſter in Chancery* 197.

[After Appearance, an Injunction to ſtay (navigating a Ship) cannot be moved but on Notice. *Maraſco* v. *Boiton*, *M.* 1750. 2 *Vezey* 112.]

[The Court will not grant an Injunction after Plea pleaded, till it is argued, but it will order it to come on immediately, and if over-ruled, Plaintiff may move at the ſame Time for Injunction. *Humphreys* v. *Humphreys*, *M.* 1735. 3 *P. W.* 395.]

Chancery

Chancery will by Injunction ſtay all Proceedings at Common Law. *Vide Practical Regiſter in Chancery* 196. (D. 9.) For ſtaying Proceedings at Common Law.

Sometimes it ſtays Trial; or, after a Verdict, it ſtays Judgment; or, after Judgment, Execution; or, if the Execution hath been executed, it will ſtay the Money in the Hands of the Sheriff. *Vide Practical Regiſter in Chancery* 201, 2.

[After an Injunction granted, the Court will give Leave to Defendant to examine Plaintiff upon Interrogatories, in the Common Law Court, or to proceed to Trial, or to affirm Judgment. *Simmons* v. *Mullins*, *M.* 1724. *Bunb.* 182.]

[If an Executor, Defendant at Law, after Declaration delivered files a Bill and obtains Injunction, Plaintiff at Law may proceed, and, on *plene adminiſtravit* pleaded, take Judgment *de bonis Teſtatoris cum acciderint*, and then a *Scire facias*, in order to an Inquiry of *Aſſets*. *Morrice* v. *Hankey*, *M.* 1732. 3 *P. W.* 146.]

[If a Bill is brought for Relief againſt a Note for Marriage-Brokage, ſupported by Affidavit, the Court will reſtrain the Defendant from aſſigning or indorſing the Note, but will not prevent his Proceeding at Law. *Smith* v. *Aſhwell*, *T.* 1747. 3 *Atkyns* 566.]

It ſhall be granted to ſtop Proceedings at Common Law, if the Defendant makes any Delay; as, if he does not appear upon the *Subpæna*, but an Attachment is awarded, an Injunction ſhall be granted, 'till Anſwer.

So, if the Defendant be beyond the Sea, or abſconds, by which Means he cannot be ſerved. *Vide Practical Regiſter in Chancery* 198.

Or, if he prays Time to make his Anſwer.

Or, takes out a *Dedimus Poteſtatem* to take his Anſwer in the Country; and the Defendant ought to take Notice thereof, without Service of the Injunction. 1 *Ver.* 25. *Vide Practical Regiſter in Chancery* 200.

[If an Injunction is diſſolved on the Merits, or for want of ſhewing Cauſe, and Plaintiff amends his Bill, he ſhall not have another Injunction on Defendant's having a *Dedimus* to take his Anſwer, but he may on the Merits. *Anon.* *P.* 1749. 3 *Atkyns* 694.]

So in the *Exchequer*, if there are Exceptions to the Anſwer, and a material Exception is diſcovered to the Court, upon Motion. *Rules and Orders in Exchequer* 16. *Rule* 41.

[Notice of Exception's being filed muſt be given two Days before an Injunction will be granted. *Lord Carliſle* v. *Wymondſell*, *in Sc. T.* 1722. *Bunb.* 116.]

[An Injunction ſhall be diſſolved of Courſe, without Motion, on over-ruling Exceptions. *Walter* v. *Ruſſell in Sc'.* *M.* 1718. *Bunb.* 30.]

[An Injunction ſhall be continued, if Defendant does not ſign his Anſwer. *Per Cur'.* *P.* 172. *Bunb.* 251. *Sed Q.* If Plaintiff takes a Copy.]

[The Court (of *Exchequer*) will not grant an Injunction, becauſe the Defendant has only demurred. *Lamb* v. *Bowes*, *T.* 1717. *in Sc'.* *Bunb.* 11.]

[Plaintiff cannot have an Injunction after Plea put in, till the Plea is removed, and he may move to have it accelerated. *Anon.* *M.* 1740. 2 *Atkyns* 113.]

[The Court granted an Injunction on a *Dedimus* to ſtay Proceedings in the Biſhop's Court. *Abthorp* v. *Jennings in Sc'.* *M.* 1718. *Bunb.* 27.]

[And in the Spiritual Court at *Richmond*. *Attorney-General* v. *Starkey*, *in Sc'.* *P.* 1722. *Bunb.* 28.]

[Where there is any Thing in the Nature of a Truſt, the Court will grant Injunction to ſtay a Suit in the Eccleſiaſtical Court for a Legacy, tho' they have Original Juriſdiction therein. *Anon.* *Hil.* 1738. 1 *Atkyns* 491.]

[If a mean Woman of bad Character inveigles an Infant Ward of the Court to marry her, and is committed for it; tho' ſhe is afterwards diſcharged, yet, till ſhe has paid the Coſts of the Contempt, ſhe is under the Juriſdiction of the Court, and it will reſtrain her from proceeding in the Spiritual Court againſt

the Infant's Guardian for Alimony, and againſt the Infant for Reſtitution of conjugal Rights and Alimony, and will order her to conſent to an Application to the Spiritual Court, for the Infant and Guardian to be abſolved from Excommunication on theſe Accounts. *Hill* v. *Turner*, *M.* 1737. 1 *Atkyns* 515.]

And ſuch an Injunction ſhall not be reſtrained as to a Proſecution of an Under-Sheriff for a Contempt before. 1 *Ver.* 25.

If an Injunction be upon a *Dedimus*, before Declaration, the Plaintiff cannot declare, and ſhall not proceed againſt Bail. *Per King*, 5 *G.* 2. 17.

If after Declaration, he may proceed to Judgment, and the Execution only is ſtayed. 5 *G.* 2. 17. *Vide* 3 *P. W.* 146, 148.

An Injunction 'till Anſwer, if it be not continued within fourteen Days after Anſwer made, and upon a Certificate of the Regiſter, if there be no Motion for the Continuance of it upon the Merits of the Cauſe, or the Inſufficiency of the Anſwer, the ſame Term or the firſt Seal afterwards, ſhall be diſſolved, without Motion.

An Injunction ſhall be granted for ſtaying Proceedings at Law, 'till the Hearing of the Cauſe, when the Action ſued is for an old Debt. *Vide Practical Regiſter in Chancery* 198, 202.

Or, the Creditor and Debtor are dead for a long Time paſſed before the Action commenced. *Vide Practical Regiſter in Chancery* 198.

[If ſome Bond Creditors proceed at Law againſt the Heir at Law, and others bring Bill for themſelves and the other Creditors, and obtain Decree for Sale and Satisfaction, Injunction will go againſt thoſe ſuing at Law, if they have not firſt obtained Judgment. *Martin* v. *Martin*, *H.* 1748. 1 *Vezey* 211.

[If a Bankrupt, who has acquieſced under Commiſſion, brings *Trover* againſt the Aſſignees a Year after, the Court will grant Injunction till Hearing. *Flower* v. *Herbert*, *T.* 1751. 2 *Vezey* 326.]

So, when the Defendant confeſſes that, which ſhews there was no Cauſe of Action, by his Anſwer. *Vide Practical Regiſter in Chancery* 198.

[If a Jointreſs permits her Son Tenant for Life in Remainder, without Waſte, to cut Timber, and the Remainder-Man over, knows and encourages it, he ſhall afterwards be injoined from ſuing for the treble Damages and Place waſted againſt the Jointreſs. *Aſton* v. *Aſton*, *H.* 1749. 1 *Vezey* 396.]

[If a Bill, brought by the principal Debtor, to ſtay Proceedings at Law, is diſmiſſed, his Bail cannot bring another Bill, taking up the ſame Equity, unleſs for Colluſion to charge the Bail at Law. *Anon.* *T.* 1755. 2 *Vezey* 630.]

[Injunction lies to ſtay Trial in Actions by a Corporation for petty Cuſtoms, till Anſwer, where the Defence at Law may ariſe out of the Anſwer. *Anon.* *T.* 1755. 2 *Vezey* 620.

Or, any Record or Writing ſhews it. *Vide Practical Regiſter in Chancery* 198.

As, if the Defendant ſues Execution upon a Statute, contrary to the Defeazance.

If he ſues a Bond, when he was the Cauſe of the Non-performance of the Condition.

If he ſues a Bond with a great Penalty, where the Cauſe of the Forfeiture was ſmall.

If the Cauſe of Action accrued by Fraud.

If the Bond, or Judgment was obtained by Fraud.

If the Conſideration for the giving of a Bond, Judgment, *&c.* was never performed.

[Injunction granted after Bond and Judgment obtained in *C. B.* becauſe the Money the Bond was given for was the Conſideration of a Contract for Stock; this was in order not to put the Parties to croſs Actions. *Smith* v. *Nottingham*, *in Sc'*. *P.* 1721. *Bunb.* 75.]

[Where the Conſideration of a Bond is the ſame as the Conſideration of a parol Contract for Stock, tho' the parol Contract be merged in the Bond, yet Equity will grant an Injunction to ſtay Proceedings at Law on the Bond. *Awbrey* v. *Fitzhugh*, *in Sc'*. *M.* 1721. *Bunb.* 84.]

If

If the Daughter of the Obligee takes Part of the Money, which the Obligor was paying; tho' ſhe was the Wife of the Obligor, but parted from her Huſband. 1 *Ch. R.* 68.

So, when the Defendant commences an Action, after the Bill exhibited, for a Thing demanded in the Bill.

So, if there be a Suit depending in the Spiritual Court for the Probate of a Codicil, by which the Obligation ſued is diſcharged. *R. Hard.* 96.

So there ſhall be an Order to ſtay Proceedings againſt a Defendant, who is an Ambaſſador in the Service of the King beyond Sea, for a Year and a Day, unleſs he returns ſooner. 2 *Ver.* 317.

[The Court will continue an Injunction in an Inſurance Cauſe, where a Commiſſion to examine is gone to *America*, eſpecially if the Caſe, in its Conſequences, affects the Merchants in general. *Green* v. *Suaſſo*, *M.* 1741. 2 *Atkyns* 229. *Chitty* v. *Selwin*, *T.* 1742. 2 *Atkyns* 359.]

[If a Guardian, before paſſing his Accounts, brings an Action againſt the Infant for his Board, the Court will continue the Injunction till hearing; for the Court will have regard to the Maintenance allowed, which a Jury would not. *Anon. H.* 1747. 3 *Atkyns* 618.]

But an Injunction ſhall not be granted to ſtay Proceedings at Law upon a bare Suggeſtion of the Plaintiff by his Bill.

[An Affidavit verifying the Allegations of the Bill may be read, to obtain Injunction. *Bennet* v. *Loggan*, *in Sc'. H.* 1718. *Bunb.* 35.]

Nor ſhall it be granted in the *Exchequer*, but upon Motion in Court, and good Cauſe. *Rules and Orders in Exchequer* 16. *Rule* 41.

[Where there is a Bill to eſtabliſh a Modus, Injunction may be granted, tho' Plaintiff had moved for a Prohibition at Law, and permitted Conſultation to go. *Blacket* v. *Finney*, *T.* 10 *G.* *Salmon* v. *Rake*, *T.* 1733. *Bunb.* 176.]

It ſhall not be granted, or diſſolved upon a Petition. *Ord. per Cla.* *Rules and Orders of Chancery* 123. *Vide Practical Regiſter in Chancery* 203.

It ſhall not be granted to ſtay, or remove a Suit by *Certiorari*, 'till a Bond be given that the Bill is ſufficient for that Purpoſe, and it ſhall be proved within 14 Days after the Writ of Injunction delivered. *Vide Practical Regiſter in Chancery* 41.

And if not done, upon Certificate of the Neglect by the Examiner, it ſhall be diſmiſſed with Coſts, and a *Procedendo* granted. *Vide Practical Regiſter in Chancery* 41, 2. *Vide Poſt*, (2 O. 1.)

[The Court cannot grant an Injunction in criminal Proſecutions, but where Parties have ſubmitted their Right to the Court, they may reſtrain them by Order from proceeding on an Indictment. *Mayor of York* v. *Pilkington*, *P.* 1742. 2 *Atk.* 302.]

[If *A.* and *B.* give a joint Bond to *C.* who dies, leaving *D.* his Widow and Executrix; *A.* dies, and *D.* is indebted on her own Account to *B.* who becomes Bankrupt, the Court will not grant Injunction to ſtay his Aſſignees from proceeding againſt *D.* for her ſeparate Debt, for there cannot be a Set-off in this Caſe. *Biſhop* v. *Church*, *M.* 1748. 3 *Atkyns* 691.]

It ſhall not be granted after Verdict uſually, without bringing the Money recovered into Court. *Vide Practical Regiſter in Chancery* 202.

But before Verdict, the Money is not uſually brought into Court.

An Injunction after a Verdict ſhall be delivered into the Hands of the Chancellor himſelf, with the Order upon which it iſſued. *Vide Practical Regiſter in Chancery* 197.

If Money is brought into Court, in order to have an Injunction to a Suit upon a Bond, if it afterwards appears, that the greateſt Part of the Bond is paid, the Money ſhall be re-delivered, on Security to pay all that is due. *Ch. R.* 1.

It ſhall not be granted to an Ejectment, tho' the Leſſor had five Verdicts againſt his Title in other Ejectments. *Eq. R.* 2.

[Tho' a Mortgagee ſuing for a Foreclоſure is not thereby precluded from bringing an Ejectment at the ſame Time, yet, if the Account is entangled with an Account of the perſonal Eſtate, and the Mortgagor will give Security to redeem, the Court will grant Injunction to ſtay Proceedings on the Ejectment. *Booth* v. *Booth*, *T.* 1742. 2 *Atk.* 343.]

[The Court will not grant an Injunction to ſtay Proceedings at Law, till the Hearing of a Cauſe on a Bill brought by Lord of a Manor, praying that the Tenants may accept of a Compenſation for Houſes he has built on the Waſte; eſpecially if a Bill brought by the Defendants has been diſmiſſed on a Suggeſtion of Plaintiffs, that it was Matter for Law. *Conyers* v. *Lord Abergavenny*, *M.* 1738. 1 *Atk.* 285.]

[The Court will not grant Injunction to ſtay Proceedings in the Admiralty, on a Suggeſtion that an Acknowledgment was obtained by Dureſs, and that Papers are deſtroyed. *Anon.* *T.* 1746. 3 *Atkyns* 350.]

[The Court will not make an Order in the Nature of an Injunction, to ſuffer a Thing pulled down as a Nuiſance to be re-erected, till the Right is determined, but will only accelerate the Determination. *Birch* v. *Holt*, *H.* 1750. 3 *Atkyns* 726.]

If the Plaintiff after an Injunction does not proceed for three Years, (or as *Shepherd* ſays for three Terms,) it ſhall be diſſolved *ex Curſu*.

If it be obtained by Miſinformation, or Abuſe of the Court, it ſhall be diſmiſſed with Coſts.

[If an Injunction is diſſolved on the Merits, and Leave given to take out Execution for a Sum awarded due, a Bill brought, Award pleaded and allowed, another Bill brought to ſtay Proceedings on other Equity (connected with the former) and Injunction obtained for want of Anſwer, this Injunction ſhall be diſcharged, tho' Defendants have had much Time to anſwer, for that does not waive the Irregularity. *Travers* v. *E. Stafford*, *T.* 1750. 2 *Vezey* 19.

[Injunction lies not to a *Mandamus* of *B. R.* nor to Indictment, Information or Prohibition. *Ld. Montague* v. *Dudman*, *T.* 1751. 2 *Vezey* 396.]

(D. 10.) For Cauſe of Privilege.

An Injunction ſhall be granted to ſtay a Suit, when the Defendant is privileged to be ſued in *Chancery*. *Vide Practical Regiſter in Chancery* 216.

When Money was lent to the Defendant for a Loan to the King. 1 *Ch. R.* 44.

When the Plaintiff ſues in the *Exchequer* for the ſame Cauſe, there ſhall be a Rule that he ſhall make his Election in which Court he will proceed; if he chooſes in the *Exchequer*, the Bill in *Chancery* ſhall be diſmiſſed; if, in *Chancery*, an Injunction goes to the *Exchequer*. 3 *Ch. R.* 2.

(D. 11.) For ſtaying Waſte.

By the Common Law, a Prohibition went out of *Chancery* againſt Tenant by the Curteſy, in Dower, or as Guardian, at the Prayer of him, who had the Inheritance, to inhibit Waſte, and that before Waſte committed. 2 *Inſt.* 299.

So now, an Injunction ſhall be granted upon an *Affidavit* of Waſte committed, to inhibit any Waſte to be committed by Tenant for Life, or Years. *Vide Practical Regiſter in Chancery* 212, 213.

Or, to inhibit Meadow, or other Paſture, not ploughed within twenty Years, being ploughed. 1 *Ch. R.* 14. *Ch. R.* 189. *Vide Practical Regiſter in Chancery* 212.

So, to inhibit antient Incloſures being thrown down. *Vide Practical Regiſter in Chancery* 212.

Or, Houſes being pulled down. 2 *Ca. Ch.* 32. *Vide Practical Regiſter in Chancery* 212.

And it ſhall be granted alſo againſt Tenant after Poſſibility, *&c.* if he pulls down the Seat, *&c.* 2 *Ca. Ch.* 32.

Or, againſt him, who in reſpect of a Truſt, *&c.* is not liable to an Action of Waſte. 2 *Ca. Ch.* 32.

[If

[If Lands are limited to *A.* for Life, to Truſtees to preſerve, *&c.* to firſt, *&c.* Sons of *A.* in Tail, Remainder to *B.* for Life, to his firſt, *&c.* Sons in Tail, Reverſion in Fee to *A.* the Court will grant Injunction, and continue it till Hearing to ſtay *A.* cutting Timber, at the Suit of *B.* tho' he has not the immediate Remainder, or at the Suit of the Truſtees to preſerve, *&c.* *Perrot* v. *Perrot*, *T.* 1744. 3 *Atkyns* 94.]

[If a Father deviſes Lands to his Son and his Heirs, but if he dies before Twenty-one without Iſſue, to his Daughters, and directs in that Caſe the Lands to be ſold, and the Money divided among them; the Court will grant Injunction to prevent cutting Timber till the Son is of Age; for till of Age, he ſhall be conſidered as Truſtee of the Inheritance for the Benefit of the Daughters. *Robinſon* v. *Litton*, *M.* 1744. 3 *Atkyns* 209.]

[The Court will grant Injunction to reſtrain Tenant for Life, *without Impeachment of Waſte*, from cutting down Trees in Lines or Avenues, or Ridings in a Park, whether planted or growing naturally, or Trees not of a proper Growth to be cut. *Packington's Caſe*, *P.* 1745. 3 *Atkyns* 215.]

[The Court will grant Injunction to ſtay Waſte, at the Suit of the Ground-Landlord againſt an Under-Leſſee, who holds by Leaſe from the original Leſſee. *Farrant* v. *Lovel*, *H.* 1750. 3 *Atkyns* 723.]

[Or againſt Tenant for Life, at the Suit of Remainder-Man in Fee, though there is an intermediate Remainder. *Ibid.*]

[Or againſt Mortgagee in Fee in Poſſeſſion, for cutting Timber, if he does not apply the Money in ſinking Principal and Intereſt. So againſt a Mortgagee for Years. *Ibid.*]

[If Tenant for Life, without Impeachment of Waſte, has cut Timber, ſo as not to leave ſufficient for Repairs, the Court will reſtrain him from cutting any more without Leave of the Court. *Aſton* v. *Aſton*, *T.* 1749. 1 *Vezey* 264.]

[The Court will grant an Injunction on a forcible Entry, againſt Commiſſioners of Turnpike digging Gravel in Land leaſed for 21 Years, and turned into a Garden, whereof Plaintiff has been 3 Years in Poſſeſſion. *Hughes* v. *Morden's College*, *M.* 1748. 1 *Vezey* 188.]

[If a ſole Right to a Ferry appears by Record, the Court will grant Injunction before Anſwer, to reſtrain others from uſing Ferry-Boats there; but there muſt be full Affidavits that Plaintiffs keep up ſufficient Ferry-Boats, otherwiſe not. *Anon.* *T.* 1750. 1 *Vezey* 476.]

[The Court will grant Injunction to ſtop a Building in *London*, which obſtructs Lights, till the Right is tried at Law, and order the Scaffolds and Boards to be pulled down. *Ryder* v. *Bentham*, *T.* 1750. 1 *Vezey* 543.]

[Injunction to ſtay Building, muſt be on ſtopping ancient Lights, for which there is Preſcription, or on Agreement. *Morris* v. *Ld. Berkeley*, *T.* 1752. 2 *Vezey* 452.]

[If a Nuſance is pulled down, the Court will not give Leave to re-erect, and quiet the Poſſeſſion till the Hearing. *Holt's Caſe*, *H.* 1750. 2 *Vezey* 193.]

[If a Defendant admits he has done Waſte before filing the Bill, tho' he ſwears he has done none ſince, the Court will not diſſolve the Injunction. *Anon.* *P.* 1747. 3 *Atkyns* 485.]

[An Injunction may be granted to reſtrain Defendants in an Information by Attorney-General at the Relation *&c.* from miſapplying Money, on their praying a *Dedimus* to anſwer. *Attorney-General* v. *Norris*, *M.* 1728. *Bunb.* 258.]

[To reſtrain Defendant from receiving *S. S.* Annuities, on Attachment for want of Anſwer. *Terry* v. *Harriſon*, *M.* 1730. *Bunb.* 289.]

[To reſtrain Rector from cutting Timber in the Church-Yard till Hearing, except for repairing Parſonage-Houſe, Out-Houſes, Chancel or Pews. *Starchy* v. *Francis*, *M.* 1741. 2 *Atkyns* 217.]

But it ſhall not be granted againſt him, who has the Inheritance, unleſs he be only a Truſtee, or in ſuch like ſpecial Caſe. *Vide Practical Regiſter in Chancery* 212.

Nor

Nor, againſt him, who has an Eſtate diſpuniſhable of Waſte. *Vide Practical Regiſter in Chancery* 212.—*Cont.* If he pulls down the antient and capital Houſe, *&c. Per Chancellor.* 2 *Ca. Ch.* 32. 1 *Sal.* 161. 1 *Ch. R. E. of Oxford* 10. *Vide* 1 *Ver.* 23.

Nor, againſt a Leſſee, who had agreed to pay 20*s.* an Acre *per Annum* Increaſe of Rent, if he ploughed a Meadow. 2 *Ver.* 119.

Yet, if a Leſſee without Impeachment of Waſte, about the End of his Term, intends to cut down all the Trees, *&c.* an Injunction ſhall go; for that is contrary to the public Good. *R.* 1 *Rol.* 380. *l.* 5.

But no Body can ſue in Equity againſt a Leſſee without Impeachment of Waſte, for Damages for pulling down Houſes, or cutting down Trees. 1 *Rol.* 379. *T.*

Altho' he avers that there was an Agreement, that the Party ſhould not commit voluntary Waſte; for there cannot be an Averment contrary to a Deed. *R.* 1 *Rol.* 379. *l.* 40.

[In a ſpecial Caſe on a particular Right, the Court will not grant Injunction before Anſwer. *Attorney-General* v. *Doughty*, *T.* 1752. 2 *Vezey* 453.]

[An Anſwer being inſufficient, is not Ground to continue Injunction; it muſt be excepted to, and if reported inſufficient, it may revive. *Morris* v. *Ld. Berkeley*, *T.* 1752. 2 *Vezey* 452.

[The Court will not grant an Injunction to reſtrain a Perſon from committing a common Treſpaſs, but if it continues ſo long as to become a Nuſance, it will. *Coulſon* v. *White*, *H.* 1743. 3 *Atkyns* 21.]

[The Court grants Injunction to reſtrain ſuch Nuſances only as are ſo at Law, not ſuch as Fear (tho' reaſonable) deems ſuch, as an inoculating Hoſpital. *Anon. M.* 1752. 3 *Atkyns* 750.]

[The Court will not grant an Injunction to ſtay digging Mines where Defendant claims the Inheritance, till the Anſwer is come in, or Defendant in Default; but if he has only a Term for Years, or Life, and the Reverſion is in Plaintiff, will grant it before Anſwer. *Lowther* v. *Stamper*, *P.* 1747. 3 *Atkyns* 496.]

[The Court will not grant Injunction to ſtay the Uſe of a Market, for there are Remedies at Law by *Scire Facias*, or Action. And Q. after the Right eſtabliſhed at Law. *Anon.* 1752. 2 *Vezey* 414.]

(D. 12.) For quieting Poſſeſſion.

An Injunction ſhall be granted for quieting the Poſſeſſion, if the Plaintiff be ouſted of his Poſſeſſion, which he had at the Time of the Bill exhibited, and for three Years before. 1 *Ver.* 156. *Vide Practical Regiſter in Chancery* 214.

And it hath been uſual to inſert, that he was in Poſſeſſion at the Time of the Bill and for ſeveral Years before, and that his Intereſt was not determined, and to give Bond in ten Pounds for the Truth of it.

But it ſhall not be granted, except it be of an Houſe, or Land.

Not for Rents received, *&c.*

Neither ſhall it be granted before the Hearing of the Cauſe, without an *Affidavit*, that he was in Poſſeſſion at the Time of the Bill, and for three Years before. *Vide Practical Regiſter in Chancery* 214.

[If a Bill be filed for quieting Plaintiff's Poſſeſſion, on Affidavit of Diſturbance, an Injunction may go, before a *Subpœna* to anſwer is ſerved. *Pearce* v. *Penroſe*, *T.* 1722. *Bunb.* 110.]

And it ſhall not extend to a Poſſeſſion, which he claims from others.

Nor ſhall it be granted upon the Motion of a Defendant, but only for him who has a Bill in Court, and was in Poſſeſſion for three Years before, or after a Determination of the Cauſe for him upon a Hearing of the Merits. 1 *Ver.* 156.

Nor will it prevent the Defendant from proceeding at Law, from making of Leaſes, diſtraining for Rent, *&c.* *Vide Practical Regiſter in Chancery* 215.

And if the Plaintiff delays his Suit, it ſhall be diſſolved. *Vide Practical Regiſter in Chancery* 215.

[A perpetual Injunction was decreed after two Trials at Bar in favour of Plaintiff. *N. B.* This Practice was introduced, that the Right might be quieted in Ejectments, (where at Law the Party is always at Liberty to bring a new one) as it was in real Actions, where the Verdict was final. *Leighton* v. *Leighton*, *M.* 7 *G. Str.* 404.]

[A perpetual Injunction was granted after five Ejectments, three Nonsuits and two Verdicts, and two Bills in Equity dismissed. *Barefoot* v. *Fry*, *H.* 1723. *Bunb.* 158.]

[If there have been Suits in this Court relating to a Will of personal and real Estate, and all Parties have admitted the Will and Probate, and Decrees thereupon made, this Court will grant perpetual Injunction to stay Proceedings in the Prerogative Court, for controverting the Will by a Party to the Suit in this Court. *Sheffield* v. *Dutchess of Buckinghamshire*, *M.* 1739. 1 *Atkyns* 628.]

[Tho' the Court will decree specific Performance of Agreement to settle Boundaries of Lands in *America*, yet it will not decree quiet Enjoyment of them, which would occasion continual Applications to this Court for Contempts, &c. and this ought to be to the proper Jurisdiction. *Penn* v. *Lord Baltimore*, *P.* 1750. 1 *Vezey* 444.]

(D. 13.) For staying Printing, &c.

An Injunction shall be granted to inhibit the Defendant from Printing Books of Common Law, the sole Privilege of which by Patent is granted to the Plaintiff, if the Defendant be in Contempt for not answering. 2 *Ca. Ch.* 67, 76, 93. *Vide Trade*, (B.)

[An Injunction may be continued after the Answer come in, on Affidavits of the Prejudice would accrue on dissolving it. *Gibbs* v. *Cole*, *P.* 1734. 3 *P. W.* 255.]

But an Injunction to inhibit a Ship trading to the *East-Indies* was denied, tho' the Owners were in Contempt for not answering a Bill by the *East-India* Company, who have by Patent the sole Trade there. 2 *Ca. Ch.* 165. Denied 'till the Validity of the Patent was tried. 1 *Ver.* 127.

So, if the Right be not settled, the Court will not grant an Injunction to the Printing, before a Trial. 1 *Ver.* 120, 275, 6.

An Injunction was granted to inhibit the Probate of a Will for the personal Estate, after a Verdict, which had found it no Will. *R. Ca. Ch.* 80.

[The St. 8 *G.* 2. *c.* 13. for Encouragement of Engraving, &c. is not confined to Works of Invention or History, but extends to any new Print; as a Print of a Building, Prints of Plants represented in a different Manner than hitherto. *Blackwell* v. *Harper*, *M.* 1740. 2 *Atkyns* 93.]

[Books colourably shortned, and where Quotations are translated, are within the 8 *Ann. c.* 19. but fair Abridgments are not; for the Invention, Learning and Judgment of the Author are shewn in them. *Gyles* v. *Wilcox*, *H.* 1740. 2 *Atkyns* 141.]

[The Court will grant an Injunction for a Collection of familiar Letters, as well as other Books. There is a Distinction between Letters wrote *by* a Person, and wrote *to* him. *Pope* v. *Curl*, *T.* 1741. 2 *Atkyns* 342.]

[So, tho' the Book has been pirated and printed in *Ireland*, and pretended to be only re-printed here. *Ibid.*]

[The Court will not grant Injunction to restrain one Tradesman from using another's Mark, (as a Card-maker from using the *Mogul* Stamp.) *Blanchard* v. *Hill*, *M.* 1742. 2 *Atkyns* 484.]

(E) Bill in Chancery.

(E. 1.) When it ſhall be filed.

IF the Defendant appears at the Return of the Proceſs, (or before Noon, or the Riſing of the Court upon the Day after Coſts Day, or, when the Proceſs is returnable the laſt Return in Term, upon the firſt Return in the next Term,) and the Bill be not then filed, the Defendant after entring his Appearance, upon the Day after the Return (if the *Subpæna* be returnable at a Day certain, if at the common Day of Return, then upon the Day after the *quarto die poſt*) by his Attorney ſhall give a Rule for Coſts. And now by the St. 4 & 5 *Ann.* 16. Bills ſhall be filed before any *Subpæna*, unleſs it be to ſtay Waſte or a Suit at Law.

And if the Bill be not filed before Noon of the next Day, the Defendant ſhall be diſcharged with Coſts to be taxed by a Maſter. *Vide Practical Regiſter in Chancery* 26, 27.

It ought to be filed with the Six Clerk, and before that, it is not of Record. *Ord. per Cla. Rules and Orders of Chancery* 94. *Vide Practical Regiſter in Chancery* 28.

It ſhall be dated upon the Day, when it comes into the Office. *Ord. per Cla. Rules and Orders of Chancery* 94. *Vide Practical Regiſter in Chancery* 27.

So, by Order in the *Exchequer*; and it ſhall be ſigned by the Attorney. *Vide Rules and Orders in Exchequer* 2. *Rule* 3.

No Six Clerk ſhall antedate any Bill. *Ord. per Cla. Rules and Orders of Chancery* 94. *Vide Practical Regiſter in Chancery* 27.

Nor ſhall any Under-Clerk keep it, without delivering it to the Six-Clerk, or his Deputy in his Abſence, to be filed. *Ord. per Cla. Rules and Orders of Chancery* 94. *Vide Practical Regiſter in Chancery* 27.

Nor ſhall make any Copy of the Bill, or other Pleading 'till it be filed. *Ord. per Cla. Rules and Orders of Chancery* 104. *Vide Practical Regiſter in Chancery* 28.

If there be a *Certiorari* Bill againſt the Plaintiff in an inferior Court, becauſe the Witneſſes are out of the Juriſdiction, and for other Matters, a *Procedendo* ſhall not go; for the Plaintiff in the inferior Court might have filed his Bill in this. *R. Ca. Ch.* 31.

No Bill ſhall be received, unleſs under the Hand of Counſel. *Ord. per Cla. Vide Practical Regiſter in Chancery* 25.

If his Hand be counterfeited, the Bill ſhall be diſmiſſed. *Vide Practical Regiſter in Chancery* 25.

Counſel ſhall not ſign any Bill, unleſs it be written or peruſed by him, before the Ingroſſment, and, for his Security, he will do well if he ſigns the Paper-Draught. *Ord. per Cla. Rules and Orders of Chancery* 93. *Vide Practical Regiſter in Chancery* 25.

In the *Exchequer* no Bill ſhall be accepted, unleſs ſigned by the Plaintiff's Attorney, and allowed by a Baron, except upon a Suit by the Attorney-General. *Vide Rules and Orders in the Exchequer* 2. *Rule* 3.

No Bill, founded upon the Loſs of a Deed, or Writing, *&c.* ſhall be received in *Chancery*, without an *Affidavit* that the Deed, *&c.* is loſt; for this Loſs intitles the Court to Juriſdiction, for otherwiſe the Plaintiff might have a Remedy at Law. *R. Ca. Ch.* 231. *viz.* when the Plaintiff prays not only a Diſcovery, but alſo Relief upon the Deed. *R. Ca. Ch.* 11. But if he does not pray Relief, an *Affidavit* is not neceſſary. 1 *Ver.* 180, 247, 310.

And there is no need of an *Affidavit*, where the Loſs of the Deed is not that, which intitles the Court to Juriſdiction. *Ca. Ch.* 231. 2 *Mod.* 173.

Nor, when the Plaintiff only prays the Diſcovery of a Deed, or the producing it at a Trial. *R. Ca. Ch.* 11. 2 *Mod.* 173.

(E. 2.) The

(E. 2.) The Matter of the Bill.

Quis, quid, coram quo, quo jure petatur, et a quo
Recte compoſitus quiſque Libellus habet.

(E. 2) Muſt have proper parties, &c.

If all proper Perſons are not made Parties to the Bill, any other ſhall be added upon Motion. *Vide Practical Regiſter in Chancery* 29. 263.

The King may ſue there for Equity; or the Chancellor himſelf; but he ſhall not make a Decree in his own Cauſe. *R.* 1 *Rol.* 373. *L.*

All concerned in the Demand ought to be made Parties; and therefore, if there be a Bill againſt the Executor of one Obligor for Diſcovery of Aſſets, all the Obligors ſhall be joined; for the Charge ought to be equal. 2 *Vent.* 348.

[If a Debt is joint and ſeveral, each of the Debtors muſt be brought before the Court, becauſe they are intitled to each other's Aſſiſtance in taking the Account, and likewiſe to Contribution; ſo on Specialty, Heir and Executor both muſt be Parties. *Madox* v. *Jackſon*, *H.* 1746. 3 *Atkyns* 406.

[But if there are Principal and Sureties, the Principal cannot object that the Sureties are not Parties. *Ibid.*]

[And if Bill is brought againſt Principal and one Surety, and it is admitted the other is dead inſolvent, and no Part of the Debt paid, his Repreſentatives need not be Parties. *Ibid.*]

[On an Information by Attorney-General, at the Relation, *&c.* Proceedings ſhall not be ſtopt, becauſe it is brought without the Privity of one of the Relators; but he may have his Name ſtruck out. *Attorney-General* v. *Norris*, *M.* 1728. *Bunb.* 258.]

[The Attorney-General need not be a Party to a Suit relating to a private Charity, ſuch as a voluntary Society to provide for the Members and their Widows, by weekly Contribution. *Anon T.* 1745. 3 *Atkyns* 277.]

If the Suit be by one Surety againſt another, for Contribution, ſuppoſing that *A.* another Surety is dead inſolvent, the Executor of *A.* ought to be a Party. *R. Ch. R.* 15.

[In a Bill by the Surety for an Accountant of the Exciſe to be relieved againſt a *Scire facias* on his Bond, the Commiſſioners of Exciſe muſt be Parties. *Makepeace* v. *Needler and the Attorney-General. M.* 1730. *Bunb.* 291.]

[If there are two Leſſees, and one brings Bill for Apportionment of Rent, the other Leſſee muſt join as Plaintiff, or be made Defendant, or the Bill will be diſmiſſed with Coſts. *Stafford* v. *City of London.* Str. 95.]

If the Suit be by Order of Veſtry, all of the Veſtry ſhall be Parties *Hard.* 333.

If there be a Covenant by a Patentee to pay a Rent to *B.* and the Right of *B.* to the Payment be dubious, in a Bill by *B.* the Attorney-General ought to be a Party. *Hard.* 181.

Otherwiſe, if the Covenant be in Affirmance of a prior Right of *B. R. Hard.* 181.

If the Suit be for a Lunatick, the Committees, as well as the Lunatick, ſhall be Parties. *R. Ca. Ch.* 19.

If the Suit be by the Aſſignee of a Legacy, the Executor ought to be a Party; and it is not ſufficient to ſay, that he conſented. *R. Ca. Ch.* 277.

So, generally, a Lunatick, as well as the Committees, ſhall be a Party. *Ca. Ch.* 113 *in Marg.* Where the Suit is for his Benefit; as, to inforce an Agreement made when he was *Compos.* *R. Ca. Ch.* 153.

Or, the Attorney General. *Ch. R.* 135.

Otherwiſe, if it be to avoid an Act done by himſelf; for he cannot diſable himſelf. *Semb. Ca. Ch.* 113, 153.

So an Ideot need not be made a Party. *Ca. Ch.* 153.

If the Bill be for an Account againſt a Truſtee, all the *Ceſtuy que Truſts* ought to be Plaintiffs. *R. upon a Plea*, 1 *Ver.* 110.

[If it appears by the Anſwer that the *Ceſtui que Truſt* is not made a Party, the Bill ſhall be diſmiſſed. *Whiſtler* v. *Webb, in Sc' M.* 1719. *Bunb.* 53.]

[The Owner of the Inheritance muſt be made Party to a Bill to eſtabliſh a Cuſtom. *Spendler* v. *Potter, M.* 1724. *Bunb.* 181.]

[In a Bill for Tithes by lay Impropriator, a Perſon intitled to a Portion of Tithes of Part of the Lands, or who has a Grant from the Crown of Part of the Lands, and the Tithes thereof, prior to the Grant of the Rectory, muſt be Party; even tho' he is before the Court as Party in a Croſs-Bill, praying Exemption as to other Lands. *Hooper* v. *Lethbridge, M.* 1730. *Bunb.* 291.]

If it be for Relief againſt an Aſſignment of a Bail-Bond by the Sheriff, the Plaintiff in the Action ought to be a Party. 1. *Ver.* 87.

But if a Man articles for the Purchaſe of Land, in his own Name, and as for himſelf, tho' it was in Truſt for another, in a Bill for Performance of the Articles, the *Ceſtuy que Truſt* need not be a Party. *Per Cowper, H.* 4 *Anne, between Bateman and Woodcock.*

[If an Anceſtor has agreed for purchaſe of particular Lands, and dies before it is compleated, and Heir at Law brings Bill againſt Deviſees who claim under Anceſtor's Will made before the Purchaſe; the Vendor muſt be a Party if his Title is doubtful, otherwiſe if it is clear. *Green* v. *Smith, M.* 1738. 1 *Atkyns* 572.]

[A Mortgagee who was aſſigned without the Mortgagor's joining, need not be made a Party in a Suit to redeem. *Hill* v. *Adams, P.* 1740. 2 *Atkyns* 39.]

[If a Remainder-Man in Tail brings Bill againſt Tenant for Life, to have the Title-Deeds brought into Court, and there are Annuitants on the Reverſion, and others who have an Intereſt under a Truſt Term, they muſt be Parties. *Pyncent* v. *Pyncent, M.* 1747. 3 *Atkyns* 571.]

[The Court is not inclinable to order Family Deeds to be brought into Court, unleſs it appears that the Tenant is deſtroying them to better his Eſtate. *Ibid.*

[If Truſtees have not conveyed legal Eſtate, they cannot be compelled to convey it after they have Notice of equitable Charges, till the Parties intitled are before the Court. *Ibid.*]

[If a Mortgagee who has a plain redeemable Intereſt, makes ſeveral Conveyances in Truſt to intangle Affairs, it is not neceſſary to make all the Perſons who have an Intereſt Parties. *Yates* v. *Hambly. M.* 1741. 2 *Atkyns* 237.]

[But where the Redemption depends on equitable Circumſtances, and the Mortgagee in Fee has made an abſolute Conveyance, with Limitations and Remainders over, the firſt Tenant in Tail muſt be a Party. *Ibid.*]

[The Heir at Law need not be made a Party to a Bill brought by a Deviſee to redeem a Mortgage, unleſs he claims to have the Will eſtabliſhed. *Lewis* v. *Nangle, T.* 1752. 2 *Vezey*, 431.]

[To a Bill for Execution of a Truſt, by ſettling an Eſtate on the ſeveral Branches of a Family, it is neceſſary to make the firſt intitled to the Inheritance a Party, if in being, *Finch* v. *Finch M.* 1752. 2 *Vezey* 491.]

[If Tenant in Tail brings Bill againſt Tenant for Life and Truſtees, to oblige them to make Settlement purſuant to a Will, and it appears that Plaintiff has covenanted to grant Annuities out of ſuch Lands as ſhall come to him after his Father's Death, theſe Annuitants muſt be Parties. *Pinſent* v. *Pinſent M.* 21 *G.* 2. 1 *Wilſ.* 179.]

[The Tenants of two Manors granted in Tail in Recompence of Services, Reverſion to the Crown, need not be made Parties to a Suit to ſettle the Boundaries; ſo neither the Planters, to a Suit to ſettle the Boundaries between two Provinces in *America*. *Penn.* v. *Ld. Baltimore, P.* 1750. 1 *Vezey* 444.]

If Plaintiff at hearing waves the Relief he prays againſt a particular Perſon, that Perſon's not being a Party is of no Weight.] *Pawlet* v. *Biſhop of Lincoln, P.* 1742. 2 *Atkyns* 296.]

[On a Bill for an Account of Fees to eſtabliſh a Right, all Perſons who have any Pretence to a Right, muſt be before the Court, for all will be bound by a Decree; tho' at Law a Judgment for Fees does not bind a third Perſon. *Ibid.*]

[If

[If you draw the Juriſdiction out of a Court of Law, you muſt have all Parties before the Court who are neceſſary to make the Determination compleat, and to quiet the Poſſeſſion; therefore if Leſſee brings a Bill to have an Obſtruction to his Way removed, and to be quieted in Poſſeſſion, the Leſſor Owner of the Inheritance muſt be before the Court. *Poore* v. *Clark*, *H.* 1742. 2 *Atkyns* 515.]

[If *A.* is appointed Executor till *B.* comes of Age, who is then to be Executor. *A.* muſt be made a Party to a Bill brought after *B.* is of Age, for a Demand on the whole Eſtate of Teſtator, unleſs *B.* has received the whole from *A.* on an Account ſtated. *Glaſs* v. *Oxenham*, *H.* 1740. 2 *Atkyns* 121.

[A Perſon who acts miniſterially only, cannot be the ſole Defendant (as the Treaſurer of the Commiſſioners for building the 50 Churches, but rather the Commiſſioners only.) *Vernon* v. *Blackerby*, *H.* 1740. 2 *Atkyns* 144.]

[The Repreſentatives of the Undertakers for Briefs, who are dead, need not be brought before the Court; for they are each anſwerable, the one for the other, and are to be conſidered as one Body. *Ex parte Angel*, *P.* 1741. 2 *Atkyns* 162.]

[Where the whole equitable Intereſt is aſſigned over, it is not neceſſary in every Caſe to make a Perſon who has the legal Intereſt a Party. *Brace* v. *Harrington* *M.* 1741. 2 *Atkyns* 235.]

[But if an Obligee aſſigns a Bond, and the Aſſignee after twenty-two Years ſilence brings a Bill, the Repreſentative of the Obligee ſhould be a Party. *Ibid.*]

If the Bill be for a Term, or perſonal Duty, againſt an Executor in Truſt, the *Ceſtuy que Truſt*, or the Reſiduary Legatee, need not be a Party. 1 *Ver.* 261.

[A Bond-Creditor may bring a Bill againſt an Executor for Diſcovery of Aſſets, and for Satisfaction, without making all other Bond or ſuperior Creditors Parties; for the Court only decrees an Account, and the Executor may ſet forth the debts. *Anon.* *M.* 1747. 3 *Atkyns* 572.]

[It is not neceſſary to make Creditors Parties to a Suit for a Legacy, the Executor is ſufficient. *Peacock* v. *Monk*, *M.* 1748. 1 *Vezey* 127.]

[If Bill is brought by a Pawnee for an Account and Delivery of Jewels, the Pawner need not be a Party, *Saville* v. *Tankred*, *T.* 1748. 1 *Vezey* 101.]

[If Huſband Tenant for Life, Remainder to his Wife for Life, brings Bill to know if certain Lands are included in the Settlement, the Wife muſt be a Party. *Herring* v. *Yoe*, *H* 1737. 1 *Atkyns* 290.]

Or, by an Heir, for Diſcovery of the Money of *A.* with which a Truſtee purchaſed an Eſtate, the Executor of *A.* need not be a Party. *R. Ch. R.* 4. 5.]

[If Creditors bring Bill to compel the Sale of Lands deviſed to pay Debts, the Heir ſhould be a Party; but if the Lands have been long enjoyed under the Will, a Sale may be decreed, tho' he is not. *Harris* v. *Ingledew*, *H.* 1730. 3 *P. W.* 91.]

[If the Truſt to pay Debts is created by Deed, the Heir need not be a Party unleſs he is to have the Surplus. *Ibid.*]

[The Heir at Law muſt be made a Party to a Bill on the Statute of fraudulent Deviſees, 3 *W & M. c.* 13. *Warren* v. *Stawell*, *H.* 1740. 2 *Atkyns* 125.]

[In a Bill for Account of Perſonal Eſtate, it is not ſufficient that the Perſon who has a Right to adminiſter is a Party, he muſt have taken out Adminiſtration. *Humphreys* v. *Humphreys* *H.* 1734. 3 *P. W.* 349. *Contra* in *Cleland* v. *Cleland*, *Pr. in Chan.* 64.]

[If Plaintiff after Bill filed takes out Adminiſtration, it may be charged by way of Amendment, as well as by way of Supplement. *Ibid.*]

[If perſonal Eſtate is given to a Baſtard, and Executors are made to take care of the Child and do it Juſtice, and it dies inteſtate without Wife or Iſſue; the Executors may ſue for the Teſtator's perſonal Eſtate, without making the Attorney General, or the Adminiſtrator of the Baſtard, Parties. *Jones* v. *Goodchild*, *H.* 1729. 3 *P. W.* 32.

Counſel ſhall take care that, the Bill be brief and ſuccinct, reciting only the material Part of Writings, without tranſcribing them *in hæc verba*, or uſing unneceſſary Traverſes, prolix Impertinence, or Multiplicity of Words. *Ord. per Cla. Rules and Orders of Chancery* 93.

The Suggeſtion, that the Plaintiff has no Remedy at Law, is uſually inſerted, but not neceſſary.

[If a Bill is brought for an Account of Fees *&c.* and to eſtabliſh a Right, it is not enough to ſay the Right veſted in Plaintiff, he muſt ſhew *how*. *Lord Digby* v. *Meech, P.* 1725. *Bunb.* 195.]

If a Bill be in the Disjunctive, as, that *A.* was ſeized for Life, *or* in Tail, *&c.* The Defendant may take it either Way, and a Bar to the Eſtate-Tail is a good Plea. 1 *Ver.* 219.

If the Bill contains Matter criminal or ſcandalous, it ſhall be expunged upon a Reference to a Maſter, and the Counſel ſhall pay Coſts to the Party grieved, before he ſhall be heard in Court. *Ord. per Cla. Rules and Orders of Chancery* 93, 4. *Vide Practical Regiſter in Chancery* 25.

But, if the Maſter report the Bill not ſcandalous, he who procured the Reference ſhall pay Coſts. *Ord. per Cla. Rules and Orders in Chancery* 94. *Vide Practical Regiſter in Chancery* 25.

[If a Bill is ſcandalous it is alſo impertinent; but it may be impertinent without being ſcandalous: and nothing relevant is either; otherwiſe Charges of Fraud would be ſcandalous. *Fenhoulet* v. *Paſſavant, T.* 1750. 2 *Vezey* 24.]

[It is not regular, to refer a Bill for Scandal after the Anſwer is put in. *Per Price B. Jones* v. *Langham, in Sc' M.* 1719. *Bunb.* 53. *Sed Q. V. Infra.*]

[After Anſwer, or ſubmitting to Anſwer, a Bill cannot be referred for Impertinence, but it may for Scandal at any time. *Woodward* v. *Aſtley P.* 1731. *Bunb.* 304. *Anon T.* 1755. 2 *Vezey* 631.]

[None ſhall be made a Defendant merely to pray Coſts againſt him; as if *A.* purchaſes a Sailor's Prize Money, and aſſigns to *B.* and the Sale is ſet aſide for Fraud, *A.* cannot be made a Party. *Taylour* v. *Rochfort, P.* 1751. 2 *Vezey* 281.]

[Praying general Relief is ſufficient. *Cook* v. *Martyn P.* 1737. 2 *Atkyns* 2.]

[Where general Relief is prayed in one Part of the Bill, and particular Relief in another, it muſt ſtand over to be amended, paying Coſts of the Day. (*Semb.* if the particular Relief is improper.) *Ibid.*]

[If a Bill prays general Relief, you may at the Bar pray particular Relief agreeable to the Caſe made in the Bill, but not intirely different from ſuch Caſe; as if the Bill is brought for a Rent-Charge iſſuing out of Land, you cannot drop that, and inſiſt on the Land itſelf. *Grimes* v. *French, H.* 1740. 2 *Atkyns* 141.]

[If a Bill prays Relief generally, the Court may thereupon make a Decree for Relief in a particular Manner: As, if the Bill be for a Marriage Portion, and general Relief prayed; if it appears that a Fine was intended for the Security of the Portion, the Court, without its being prayed, may decree, that a Fine ſhall be levied. *R.* 2 *Mod.* 91.

[It is not irregular for a Bill to have two different Aſpects, that if one fails, the other may anſwer the Purpoſe for which it is brought. *Bennet* v. *Vade, T.* 1742. 2 *Atkyns* 324.]

Two Bills may be filed upon one *Subpœna* againſt the ſame Defendant. *Vide Practical Regiſter in Chancery* 26.

But if the two Bills are for the ſame Cauſe, and ſo reported upon a Reference, one of them ſhall be diſmiſſed with Coſts. *Vide Practical Regiſter in Chancery* 26.

[If a Bill is brought by ſome Creditors in behalf of themſelves and others, and another Bill by other Creditors for the ſame Purpoſes, the Court will ſuffer both to proceed. In the Matter of *Price, M.* 1747 3 *Atkyns* 602.]

[A Man may bring Bill in the Name of his Aſſignor, and another in his own Name, and the Court will not ſtop Proceedings in either. *Gage* v. *Ld. Staffford T.* 1750. 1 *Vezey* 544.]

After Anſwer, the Plaintiff may diſmiſs his own Bill with 20*s.* Coſts. *Dub. e Ver.* 116.

[After Anſwer, Plaintiff may always amend on Payment of 20*s.* Coſts; tho' *Hardwicke* C. ſaid he would conſider ſome way how to make Defendant a more adequate Compenſation after a long Anſwer. *Deggs* v, *Colebrooke*, *H.* 1738. 1 *Atkyns* 396.]

[After Publication Plaintiff cannot amend, without withdrawing his Replication. *Anon. H.* 1738. 1 *Atkyns* 51.]

[Matter ſubſequent to the original Bill cannot come by way of Amendment, but by way of ſupplemental Bill. *Brown* v. *Hidgen*, *H.* 1736. 1 *Atkyns* 291.]

[If Bill is brought charging Forgery in a Leaſe, and mentioning by way of Inducement Fraud in Truſtees who are not made Parties, and Relief prayed againſt the Forgery only; and there has been a decretal Order, and a Trial of the Forgery; the Cauſe coming on upon the Equity reſerved ſhall ſtand over, and Plaintiff bring ſupplemental Bill, charging the Fraud, and making the Truſtees Parties. *Jones* v. *Jones T.* 1744. 3 *Atkyns* 110.]

[A ſupplemental Bill, properly ſo called, is a Bill brought for new Matter ſince the Original filed, and before the Hearing, and the Defendants in the Original muſt be Parties to the ſupplemental; but if the Objection for want of Parties is not made at the Hearing, it cannot be made when the Cauſe comes on again. *Jones* v. *Jones P.* 1745. 3 *Atkyns* 217.]

[After an Account decreed, if during the Account a Party die, a Bill to bring the Deviſee of ſuch Party, or other formal Party (as a Truſtee) before the Court, is not a ſupplemental Bill, but a ſupplemental Bill in the Nature of a Bill of Revivor, and the Defendants in the original Bill need not be Parties. *Ibid.*]

But now by the St. 4 & 5 *Ann* 16. The Plaintiff ſhall pay full Coſts to be taxed by a Maſter, if he diſmiſs his own Bill, or the Defendant diſmiſs it for want of Proſecution.

And after a Decree the Plaintiff cannot diſmiſs his Bill. *R. Ca. Ch.* 40.

[A Bill brought for Diſcovery merely, and praying no Relief, cannot be diſmiſſed for want of Proſecution, but Defendant may have an Orderfor his Coſts. *Woodcocke* v. *King*, *H.* 1738. 1 *Atkyns* 286.]

(F.) Bill of Revivor.

IF the Plaintiff, or Defendant die, his Heir, or Executor, &c. ſhall have a Bill of Revivor againſt the Defendant, his Heir, or Executor, who has his Intereſt. *Vide Practical Regiſter in Chancery* 44.

If Huſband and Wife are Defendants, and the Huſband die, the Plaintiff ſhall have a Bill of Revivor. *Vide Practical Regiſter in Chancery* 46.

If a Woman be Plaintiff, and, after an Anſwer to her Bill, ſhe marries; the Huſband and Wife ought to have a Bill of Revivor. *Vide Practical Regiſter in Chancery* 47.

If two Executors are Plaintiffs, and one dies, there ſhall be a Bill of Revivor. *Vide Ca. Ch.* 77.

Or, if one of them marries, where her Authority ceaſed by the Will upon the Marriage, if that does not appear by the Bill. *Ca. Ch.* 77.

If Part of the decretal Order is omitted in the Decree ſigned and inrolled, the Plaintiff may revive the Suit by Bill of Revivor. *R. on Demurrer*, *Ca. Ch.* 37.

So a Defendant may have a Bill of Revivor as well as a Plaintiff. *Abr. Ca.* 2.

[A Defendant cannot revive, except only when there is a Decree to account. *Anon. H.* 1748. 3 *Atkyns* 691.]

But

But if the Bill be by Husband and Wife, and after Answer, he dies, the Wife shall revive, or not, at her Election. *Vide Practical Register in Chancery* 47.

[If Bill is brought by Husband and Wife for a Demand in her Right, and he dies, the Cause does not abate. *Anon. H.* 1750. 3 *Atkyns* 726.]

If there be a Bill of Interpleader, and, after a Trial directed between the Defendants, the Plaintiff dies, a Bill of Revivor is not necessary; for the Bill is at an End as to the Plaintiff, and the Defendants may proceed; for each of them is in the Nature of a Plaintiff. 1 *Ver.* 351.

If there be a Bill against Trustees and the *Cestuy que Trust* in Fee, to have a Conveyance to the Plaintiff for Life, and afterwards to his Issue in Tail, and the *Cestuy que Trust* dies after a Decree for the Conveyance, the Trustees may convey without a Bill of Revivor; for the Death of one Plaintiff or Defendant abates the Suit only as to himself, and a Reviuor is not necessary, where nothing is to be done by the Representatives of him who is dead. *Abr. Ca.* 2.

[Tho' by *Stat.* 8 *W.* 3. a Suit shall not abate by the Death of one Defendant, yet it must be taken with this Restriction, that the Subject Matter of the Bill is not hurt by such Defendant's Death. *Brown* v. *Hidgen, H.* 1736. 1 *Atkyns* 291.]

So, if a Bill be against a *Feme Sole*, who, after Answer, marries, there is no Need of a Bill of Revivor; for the Husband shall be concluded by her Answer. *Vide Practical Register in Chancery* 46, 7.

So, if there be a Bill by a *Feme Sole*, and, before Answer, she marries, it is not necessary. *Vide Practical Register in Chancery* 48.

If Joint-Tenants, Joint-Obligees, Obligors, or Executors sue, and one of them dies after Answer, there is no Need of a Bill of Revivor for the Survivor; because the Interst survives. *Vide Practical Register in Chancery* 47.

If two Plaintiffs, and one dies after Bill filed and *Subpœna* served but not returned, and the other without reviving takes out Attachment, and Defendant (it being in Vacation) answers; the Answer shall not be taken off the File, nor a Bill of Revivor brought; for if the Suit is abated, Defendant will have the Benefit of it at the Hearing. *Lasco* v. *Moys, H.* 1723. *Bunb.* 144.]

So, if an Administrator, as Guardian to an Infant Executor, sues, and, *pendente lite*, the Infant comes of full Age, it is not necessary. *Vide Practical Register in Chancery* 48.

An Assignee, or a Purchaser shall not have a Bill of Revivor for want of Privity. *Semb.* 1 *Ver.* 283. 427. *Abr. Ca.* 3.

No one shall be made Party to a Bill of Revivor, who is not in Privity. *Ca. Ch.* 151. *Vide in Marg.*

A Devisee shall not have a Bill of Revivor; for he does not represent the Testator, but is in Nature of a Purchaser. *Ca. Ch.* 174.

If the Plaintiff dies after a Decree before Costs taxed, no Bill of Revivor lies for the Costs. *R. upon a Plea,* 2 *Ca. Ch.* 7.

[A Bill of Revivor may be brought, for Duty and Costs not taxed in Defendant's Life-Time, but not for Costs alone. *Dodson* v. *Oliver, H.* 1723. *Bunb.* 160.]

But Notice to one in the Remainder, of a Bill of Revivor, was proper, tho' it was not necessary to make him a Party, not being in Privity. *Ca. Ch.* 151. *Vide in Marg.*

A Creditor, allowed by Order to prove his Debt, may revive, tho' he was not a Plaintiff originally. *Abr. Ca.* 3.

[If Defendant by Answer only (not by Plea or Demurrer) insists Plaintiff is not intitled to revive, yet the Court on Motion will order the Proceedings to stand revived; but if Plaintiff does not shew he has a good Title to revive, he will take nothing by his Suit at the Hearing. *Harris* v. *Pollard, H.* 1734. 3 *P. W.* 348.

A Bill of Revivor pursues the first Bill; for if there be a Variance, it will be dismissed. *Vide Practical Register in Chancery* 45.

He who revives, after Revivor stands in the same Condition as his Predecessor

If

If a Bill of Revivor revives more than it ought, it will be bad. *R. upon Demurrer, Ca. Ch.* 77.

If it revive the whole Decree, which was to pay Money and to convey Land, it may ſtand as to the Perſonalty, if the Executor only revives, and not as to the Realty; tho' the Demurrer be general to the Whole. *Abr. Ca.* 4.

But any Plaintiff may be omitted in a Bill of Revivor, who was Plaintiff to the former Bill. *D.* 2 *Ca. Ch.* 80.

And, if the Bill of Revivor alledges a Releaſe, by the Plaintiff omitted, to the other Plaintiffs, and prays an Anſwer, it is no material Variance. *R.* 2 *Ca. Ch.* 80.

So a Defendant, who had not put in his Anſwer, may be omitted. 1 *Ver.* 308.

So if one Plaintiff refuſes to join in Revivor, the other ſhall revive againſt him and the other Defendants. *Abr. Ca.* 2.

If Huſband and Wife are Defendants, and after Anſwer the Huſband dies, ſhe ſhall anſwer *de novo* to the Bill of Revivor, or her firſt Anſwer ſhall ſtand, at her Election. *Vide Practical Regiſter in Chancery* 46.

If an Anſwer to a Bill of Revivor, of Part of an Order omitted in the Inrolment of the Decree, draws into Re-examination Matters formerly ſettled, an Order ſhall be made, that ſuch Matters be not re-examined. *Ca. Ch.* 56.

A Bill of Revivor is not allowed after thirty Years. 2 *Ca. Ch.* 216.

And a Plaintiff upon an Abatement of the Suit may have a Bill of Revivor, or an Original Bill, at his Election. 1 *Ver.* 463.

If a Defendant, ſerved with Proceſs upon a Bill of Revivor in the *Exchequer*, does not anſwer, nor pay a Commiſſion within eight Days, the Proceedings ſhall be revived upon Motion. *Rule and Orders in the Exchequer* 17. *Rule* 43.

[If Aſſignees of a Bankrupt bring a Bill, and obtain a Decree *niſi* againſt Defendants who make Default, and then new Aſſignees are choſen, who bring Supplemental Bill in the Nature of a Bill of Revivor, they ſhall ſtand in the Place of the Former, and may ſerve Defaulters with *Subpœna* to ſhew Cauſe. *Brown* v. *Martin, P.* 1745. 3 *Atkyns* 218.

[If a Decree is ſigned and inrolled, upon a *Subpœna Scire Facias* it may be revived without Appearance. *Semb. Wharam* v. *Broughton, M.* 1748. 1 *Vezy* 180.]

[If a Suit has abated, the Court by Conſent of Parties may order Money to be paid out of Cout without Revivor, or may declare that a Party is intitled to ſo much. *Beard.* v. *Earl Powis, T.* 1751. 2 *Vezy* 399.]

(G) Bill of Review.

AFTER the Diſmiſſion of a Bill, upon a full Hearing, and this Diſmiſſion ſigned and inrolled, the Cauſe ſhall not be retained, but by Bill of Review for ſpecial Cauſe. *Vide Practical Regiſter in Chancery* 51

Vide Re-hearing, Poſt (Y. 5.)

Nor ſhall the Decree be reverſed, or altered, but upon a Bill of Review, unleſs it be for a Miſcaſting. *Vide Practical Regiſter in Chancery* 51.

[If the Decree is inrolled, there cannot be a Rehearing, nor Relief on an Original Bill, and the only Remedy is by Bill of Review, which muſt be either for Error on the Face of the Decree, or for new Matter diſcovered ſince. *Taylor* v. *Sharp, T.* 1735. 3 *P. W.* 371.]

[If the Decree is not ſigned and inrolled, a Bill *in the Nature* of a Bill of Review may be brought, it being fruitleſs to make a Man ſign and inrol a Decree againſt himſelf, to intitle him to bring a Bill of Review. *Standiſh* v. *Radley, P.* 1741. 2 *Atkyns* 177. *Lewellin* v. *Macworth, T.* 1740. 2 *Atkyns* 40.]

[There muſt be probable Cauſe made, that the new Matter will be relevant; as if after a Decree in Favour of Parties claiming under a Settlement, Deeds are diſcovered which make it poſſible that the Maker of it had not Power to make it. *E. Portſmouth* v. *E. Effingham, P.* 1750. 1 *Vezy* 430. *Bennet* v. *Lee, H.* 1742. 2 *Atkyns* 529.]

[If Supplemental Bill is brought for new Matter diſcovered; if there is none, Defendant muſt avail himſelf of it by Plea or Demurrer, but cannot at Hearing. *Lewellin* v. *Macworth*. *T.* 1740. 2 *Atkyns* 40.]

[On a Supplemental Bill in Nature of a Bill of Review, there muſt be a Petition to re-hear or appeal. *Moore* v. *Moore*, *T.* 1755. 2 *Vezy* 596.]

But for Cauſe apparent in the Decree it may be reviewed; as, if Land *in Capite* be all deviſed for Payment of Debts; and ſo decreed, where by Statute it is void for a third Part. *R.* 1 *Rol.* 382. *l.* 10.

So, if the Decree be founded upon a Miſtake of the Law; for a Review is in Nature of a Writ of Error. *R.* 1 *Rol.* 382. *l.* 10.

Or, upon a Miſtake in Conſcience, upon the Proof before the Chancellor; and that is the uſual Courſe. 1 *Rol.* 282. *l.* 35.

Or, for Defect in the Words of the Decree. 2 *Ca. Ch.* 162.

Or, for Want of Juriſdiction in the Court. 1 *Ver.* 292

And there may be a Review of a Decree for the Plaintiff for leſs than was due, as well as upon a Diſmiſſion, or a Decree againſt him. *Ca. Ch.* 53.

No Review ſhall be allowed, but for Error apparent in the Decree. *Ca. Ch.* 54.

Or upon *Affidavit* of new Matter ariſing ſince the Decree made; for neglecting to have Evidence, which was known to the Party, at the Time of the Decree, is not Cauſe for a Review. *Ca. Ch.* 43. 1 *Ver.* 166. *Eq. Ca.* 184.

[But the Diſcovery of new Matter, in Being at the Time of the Decree, but not known till after, intitles to a Review. *Standiſh* v. *Radley*, *P.* 1741. 2 *Atkyns* 177.]

Nor the Confeſſion of the Party ſince the Decree. *Ca. Ch.* 43.

Nor, the Miſreciting of a Fact or Proof by the Decree; for that is a Record, and if the Decree be purſuant to the Fact there recited, a Review ſhall not be allowed. *R. Ca. Ch.* 54.

Nor, 'till a Recognizance given to the Maſter, for Payment of the Coſts and Damages. *Vide Practical Regiſter in Chancery* 51.

[No Supplemental or new Bill in Nature of a Bill of Review, grounded on new Matter ſince the Decree, ſhall be exhibited without Leave of the Court, and depoſiting 50 *l.* to anſwer Coſts and Damages. *General Order*, 17 *Oct.* 1741. 2 *Atkyns* 139.]

Nor, in the *Exchequer* 'till Coſts paid, and a Recognizance to perform the former Decree, and to pay the further Coſts; otherwiſe there need be no Anſwer to it. *Rules and Orders in Exchequer* 13 *Rule* 33.

Nor, in *Chancery* 'till he has obeyed the firſt Decree: As, if he have paid the Money, delivered Writings, or the Poſſeſſion of Land decreed: Yet the Court has diſpenſed with this Rule upon good Security given for the Payment of the Money, *&c.* 14 *Car.* 2. *Ca. Ch.* 42. 1 *Ver.* 117.

But if the Decree be for the Extinguiſhment of a Right, Conveyance of Land, Releaſe of a Debt, Cancelling of Writings, *&c.* Performance may be deferred, by Order of Court, 'till the Hearing of the Cauſe upon the Bill of Review. *Vide Practical Regiſter in Chancery* 52.

So, upon an *Affidavit*, that the Plaintiff is not able to pay, and the Defendant has Land in Execution for Coſts. 1 *Ver.* 264.

No Time is limited for a Review, but after long Acquieſcence the Error ought to be apparent. 1 *Ver.* 287, 293.

[The Court is very tender of permitting a Bill of Review after a long Time, and will not do it unleſs the Petitioners bring themſelves very clearly within Lord *Bacon's* Rules. *Norris* v. *Leneve*, *H.* 1743. 3 *Atkyns* 26.]

[The Court will not grant a Bill of Review, when an Account was directed and taken on a Foreclоſure Bill, and the Report confirmed ſome Years before; and it appears that the Defendant's Agent, Attorney and Solicitor, attended the Maſter for him. *Gould* v. *Tancred*, *H.* 1742. 2 *Atkyns* 533.]

Upon a Review, no Witneſs ſhall be examined to a Matter, upon which an Examination might have been upon the firſt Bill. *Vide Practical Regiſter in Chancery* 53. *Vide ſupra.*

On

[On arguing a Demurrer to a Bill of Review, nothing can be read but what appears on the Face of the Decree; but after Demurrer over-ruled, Plaintiff may read Bill, Anſwer, or any Evidence, as at a Re-hearing. *Catterall* v. *Purchaſe* T. 1738. 1 *Atkyns* 290.]

[Papers in the Hands of one of the Parties before, but not diſcovered till after the Decree, may be read on a Bill of Review. *Standiſh* v. *Radley*. *P.* 1741. 2 *Atkyns* 177.]

[If a Party in the firſt Cauſe has examined to eſtabliſh a particular Point, the Court will not ſuffer him to bring a new Bill, to contradict what he attempted to prove in the firſt: As, firſt to prove a Man Sane, and then to prove him Inſane. *Bennet* v. *Lee*, *H.* 1742. 2 *Atkyns* 529.]

It is not Cauſe for a Review, that the Suit was abated by the Death of the Defendant before the Decree. *R. Ca. Ch.* 122.

Or, that a Fact is falſe; for there can be no new Examination after Publication. *R.* 1 *Rol* 382. *l.* 30. *Ch. R.* 37.

Or, that there was a Verdict, and a Sentence in the Eccleſiaſtical Court afterwards to the contrary. 1 *Ch. R.* 25.

No Review ſhall be allowed for him, who is not privy to the firſt Decree; Not for a Deviſee of the Plaintiff in the firſt Bill. *Ca. Ch.* 123.

But where four defend for all the Inhabitants of ſuch a Place; another Inhabitant, not Party or Privy to any of the four Defendants, ſhall have a Review. *Ca. Ch.* 272.

Nor ſhall a Review be allowed againſt him, who is no Party, or Privy.

Nor for him, who has releaſed his Equity, before the Decree. *Semb. Ca. Ch.* 107.

No Review ſhall be admitted after a Bill of Review; for that would be infinite. 7 *Co.* 45. *b.* * 2 *Cro.* 186. * *R.* 2 *Ca. Ch.* 133. 1 *Ver.* 135. 441.

Tho' the firſt Bill was diſmiſſed, without Anſwer, *&c.* *R.* 2 *Ca. Ch.* 133.

Or, there be an apparent Error. 1 *Ver.* 417. *Vide* 2 *Ca. Ch.* 133.

But a Bill of Review may be by one Defendant only, who is *Pars gravata*. *R. Hard.* 50.

So where the Plaintiff has no Eſtate or Title, but in Equity. *Hard.* 50.

So, if Truſtees have obtained Decrees, and afterwards are changed, the new as well as the old Truſtees may be Parties to a Review. *Hard.* 104.

[* 7 *Co.* and 2 *Cro.* are upon Bills of Revivor.]

As to a *Certiorari* Bill, *Vide Poſt*, (2 O. 1.)
As to a Bill of Interpleader, *Vide Poſt*, (3 T.)

(H.) Demurrer.

(H. 1.) When it lies, and when not.

IF a Bill be filed and and the Defendant appears, he may demur, plead, or anſwer, otherwiſe all Proceſs ſhall iſſue againſt him, as if he had not appeared.

[The Defendant may demur if the Bill is for a Matter or Sum below the Dignity of the Court, and it will be diſmiſſed, or upon Motion; but if there is Fraud or complicated Matter, it will be retained, however ſmall. *Per Price B. M.* 1717. *Bunb.* 17.]

[If Bill is brought for Relief againſt ſeveral Contracts for Shares of the ſame Stock bought of the Defendants ſeverally, and charges that they had formed themſelves into a Society to carry on the Fraud, yet Demurrer lies. *N. B.* Defendants muſt deny Combination. *Bull* v. *Allen in Sc'. H.* 1720. *Bunb.* 69.]

[Tho' Defendant does not demur to a Bill, as being too trifling for the Court to entertain, yet he may take Advantage of it at the Hearing. *Brace* v. *Taylor*, *H.* 1741. 2 *Atkyns* 253.]

A Defendant may demur, if the Bill be for Relief in a Matter not proper for the Court; as, if a Bill of Revivor revive an Order made by the Conſent of the

the Plaintiff, now married and not a Party; for her Conſent is determined. *R. Ca. Ch.* 77.

[If Plaintiff prays Injunction to a *Mandamus* from *B. R.* or to an Indictment, Information or Prohibition, Defendant may demur. *Ld. Montague* v. *Dudman*, *T.* 1751. 2 *Vezey* 396.]

[If Bill is brought to eſtabliſh Plaintiff's Right of Common, and ſet aſide former Decrees, Demurrer lies to the whole Bill, for Plaintiff ought to have brought Bill of Review. *Lady Granville*, v. *Ramſden, in Sc' H.* 1719. *Bunb.* 56.]

[Tho' Defendant has anſwered original Bill, he may demur to the amended Part. *Lowther* v. *Whorwood*, *M.* 1722. *Bunb.* 120.]

[Defendant may demur for want of Parties, or may take Exceptions for it at the Hearing. *Derwent* v. *Walton*, *H.* 1742. 2 *Atkyns* 510.

[Defendant may demur, if there are not ſufficient Parties; as if a Jointreſs brings Bill againſt Heir at Law to have a Covenant of her Huſband (to leave a Jointure-Houſe in repair) performed, and Satisfaction for the want of it, the Heir may demur for that the Executor ought to be a Party; for tho' at Law the Creditor may ſue the Heir only, where he is bound, yet as the perſonal Eſtate is the natural Fund for Debts, and the Executor may ſhew he has performed the Covenant, he muſt be a Party in Equity. *Knight* v. *Knight M.* 1734. 3 *P. W.* 331.]

[Yet if Adminiſtrator with the Will annexed is a Defendant, another Defendant ſhall not demur, becauſe it does not appear that the Executor did not leave an Executor, for the Court will preſume the Adminiſtration to be right. *Tourton* v. *Flower*, *T.* 1735. 3 *P. W.* 369.]

[But if Plaintiff has taken out Adminiſtration in a proper Court in a foreign Country, our Courts can take no Notice of it; and if he has not alſo taken it out here, Defendant may demur. *Ibid.*]

[If an Eſtate is charged with 10*l. per ann.* Wages to the Knight of a Shire, and a Right given to a Corporation, conſiſting only of the two Knights and the Sheriff, to enter and diſtrain, and one Knight and the Sheriff refuſe to join in recovering it, and the other brings Bill for it, defendant may demur. *Shepherd* v. *Gotton*, *T.* 1747. 1 *Vezey* 38.]

[If a Crew of 80 appoint two of their Number, Agents for Prizes, and afterwards 64 of them agree the two Agents ſhall have certain Shares, and Bill is brought in behalf of the Agents and the 64, Demurer lies, for the whole 80 ſhould be Parties. *Leigh* v. *Thomas*, *T.* 1751. 2 *Vezey* 312.]

[To a Bill brought for Injunction to ſtay Proceedings in Eccleſiaſtical Court for a Church-Rate, to which a Cuſtom was pleaded and Plea admitted, and for Diſcovery of the Value of Eſtates, Defendant may demur, for they are cognizable there. *Dun* v. *Coates*, *M.* 1738. 1 *Atkyns* 288.]

[If the Lord of one Manor brings a Bill againſt the Lord of another Manor, to eſtabliſh a Right and be quieted in the Poſſeſſion of a Fiſhery, Defendant may demur, for the Right ſhould be firſt tried at Law. *Ld. Tenham* v. *Herbert*, 1742. 2 *Atkyns* 483.]

[If the Executor of an Attorney brings Bill for Money due for Buſineſs done, Defendant may demur, for that the Remedy is at Law under 2 *G.* 2. *c.* 23. *Parry* v. *Owen T.* 1751. 3 *Atkyns* 740.]

[If there is a Decree to account, an Eſtate to be ſold, and the Money paid to Incumbrances according to Priority, and afterwards Plaintiff diſcovers and buys in Incumbrances prior to Defendant, and brings Bill to tack his Mortgage to theſe, Defendant may demur. *Wortley* v. *Birkhead*, *T.* 1754. 3 *Atkyns* 809]

[If the Lord of a Market brings Bill for Toll of Corn brought to Market, and that Defendant combines to ſell by Sample at his Houſe, and thereby prevents Corn being brought to Market, which is foreſtalling, and prays Diſcovery; theſe are Law Queſtions, and Defendant may demur. *Hawley* v. *Taylor*, *M.* 1754. 3 *Atkyns* 815.]

[If a ſupplemental Bill is brought againſt a Defendant, no Party to the original Bill, to anſwer the Matters in the original Bill, and no new Matter is pretended

to be ariſen ſince filing the original Bill, Defendant may demur. *Baldwin* v. *Mackown*, *M.* 1754. 3 *Atkyns* 817.]

[If a Bill is brought for Diſcovery of Aſſignment of a Leaſe without Licence, tho' it is not brought for the Forfeiture, yet it does not expreſly wave the Forfeiture, Defendant may demur. *Ld. Uxbridge* v. *Staveland*, *M.* 1747. 1 *Vezey* 56.]

[Defendant may demur to a Bill brought by the *Eaſt-India Company*, to diſcover how he came by Poſſeſſion of certain Goods, and whether not by Acts amounting to piracy or felony. *E. I. co.* v. *Campbell*, *T.* 1749. 1 *Vezey* 246. *in Sc.*

[But Demurrer does not lie to a Bill for Diſcovery of a Conſpiracy, in ſetting up a *Baſtard* Child; for it is not a Ground for criminal Proſecution. *Chetwyn* v. *Lindon* *T.* 1752. 2 *Vezey* 450.]

[Nor can Defendant to whom Lands are deviſed charged to be an Alien demur to the Diſcovery; for the Diſability of an Alien to hold Lands is not a Penalty nor a Forfeiture, but an Incapacity; nor to a Diſcovery whether another Defendant is an Alien, if firſt Defendant hath an Intereſt (tho' uncertain) in the Lands. *Att. Gen.* v. *Dupleſis*. *H.* 25. *G.* 2. *Parker* 144.]

So he may demur, if the Plaintiff does not intitle himſelf to the Thing demanded; as, if the Huſband ſue alone, for a Thing to which he has no Title without joining his Wife. *Ca. Ch.* 41.

[If a Papiſt aſſigns an Advowſon for a Term, and on conforming brings Bill for Re-aſſignment, ſuggeſting it was in Truſt for himſelf to avoid the Penalties, the Defendant may demur. *Cottington* v. *Fletcher*, *H.* 1740. 2 *Atkyns* 155.]

[To a Bill brought by a Proteſtant next of kin, for Account of a Rent-Charge ſettled on a Papiſt on Marriage, Defendant may demur, for the Purchaſe or Grant is void. *Michaux* v. *Grove*, *T.* 1741. 2 *Atkyns* 210.]

[If a Bill brought for real Eſtate ſeeks Diſcovery of Proceedings in the Court of Delegates, Defendant may demur, for they relate only to perſonal Eſtate. *Baker* v. *Pritchard*, *T.* 1742. 2 *Atkyns* 387.]

[If a Bill is brought for an Injunction, and to eſtabliſh a Right which is for a Monopoly, and doubtful, and where the Proceedings would be long and expenſive; the Court will allow a Demurrer, for that Plaintiff ſhould have firſt eſtabliſhed his Right at Law. *Whitchurch* v. *Hide*, *T.* 1742. 2 *Atkyns* 391.]

If the Bill demand an Account of an Eſtate from an Executor, upon a Clauſe in the Will of his Teſtator, who deviſes a Moiety of the Eſtate, which his Wife and Executor ſhall have at his Death to the Plaintiff. *Ch. R.* 31.

If the Bill demand a Diſcovery of a Title againſt a Deviſee, where the Plaintiff does not ſhew a Title in himſelf. *R. Ch. R.* 36.

[If the Lord of a Manor brings Bill for Recovery of a Fine, ſuggeſting that Defendant was admitted by Attorney, but denies it, and for Arrears of Quit-Rents, the Lands out of which they iſſue being unknown, and Defendant demurs as to Relief, the Demurrer is good. *North* v. *E. Strafford*, *M.* 1732. 3 *P. W.* 148.]

[If the Bill does not aver Defendant to be Aſſignee, but only that Plaintiff is ſo informed, Defendant may demur. *Ld. Uxbridge* v. *Staveland* *M.* 1747. 1 *Vezey* 56.

[If it is upon a collateral Covenant, not running with the Eſtate and which therefore does not bind Aſſignees, an Aſſignee Defendant may demur. *Ibid.*]

So, if the Plaintiff demand Things of ſeveral Natures againſt ſeveral Defendants in the ſame Bill, if the Defendants deny the Combination charged; otherwiſe not. 1 *Ver.* 416.

And they ought to deny Combination, without more; for more over-rules the Demurrer. 1 *Ver.* 463.

[Yet where there has been Poſſeſſion of a Fiſhery for a long Time, he who claims the ſole Right may bring a Bill to be quieted in Poſſeſſion, tho' he has not eſtabliſhed his Right at Law; and it is not good Cauſe of Demurrer that Defendants have diſtinct Rights, for on an Iſſue to try the general Right, they may take advantage of them. *Mayor of York* v. *Pilkington*, *M.* 1737. 1 *Atkyns* 282]

So, if the Plaintiff ſues before Cauſe of Action; as, if he ſues an Executor for a Diſcovery of Aſſets before a Suit commenced againſt him; for perhaps he would pay, or confeſs Aſſets. *Semb. Hard.* 115.

It is good Cauſe of Demurrer, that it appears by the Bill that Defendant has been in uninterrupted Poſſeſſion for 34 Years, and no Incapacity pretended. *Frazer* v. *Moor in Sc' M.* 1719. *Bunb.* 54.]

[A Truſtee may demur as well as the *Ceſtuy que Truſt*, and the *Ceſtuy que Truſt* is intitled to have the Privilege maintained by the Truſtee. *E. Suffolk* v. *Green*, *T.* 1739. 1 *Atkyns* 450.]

[If Diſcovery is ſought, whether Defendant did not procure Subornation of Perjury, and whether the Evidence of *A.* did not influence a Verdict, Defendant may demur to both as one Queſtion. *Baker* v *Pritchard T.* 1742. 2 *Atkyns* 387.

[If a Legacy is given to a Woman provided ſhe marry with Conſent, if not, given over, ſhe may demur to a Bill for a Diſcovery of her Marriage. *Chauncey* v. *Tabourden T.* 1742. 2 *Atkyns* 392.]

If a Portion is given *over*, on Marriage without Conſent, Defendant may demur to Diſcovery of the Marriage *only*, tho' Diſcovery of the Conſent is not prayed. *Chancey* v. *Fenhoulet*, *P.* 1751. 2 *Vezey* 265.

[But if a Man by his Will gives his Wife the whole Surplus of his perſonal Eſtate, but if ſhe marry again then ſhe is to deliver up half of the Surplus to his Brother and his Heirs, and he ſhall call her to an Account for it; a Demurrer to a Bill for a Diſcovery of her Marriage, and for an Account, ſhall be over-ruled. *Lucas* v. *Evans*, *T.* 1745. 3 *Atkyns* 260.]

[Demurrer lies to a Bill brought to diſcover whether there is ſuch a Perſon, or where he is, only to make him a Party. *Dinely* v. *Dinely*, *T.* 1742. 2 *Atkyns* 394.]

[If a Bill is brought to diſcover whether Defendant after being inſtituted *&c.* to one Living, was not inſtituted *&c.* to another, he may demur. *Boteler* v. *Allington*, *H.* 1746. 3 *Atkyns* 453.]

But it is no Cauſe for a Demurrer, that the Plaintiff ſuggeſts, that the Court Roll (by which the Defendant claims a Copyhold) was falſly entered by the Steward, tho' the Defendant alledges, that the Homage had found the Entry to be true.

That the Bill contains ſcandalous Matter; for that ought to be referred, and expunged. *Semb.* 1 *Ver.* 107.

[If an Officer of a Company is made Defendant to a Bill againſt the Company for a Diſcovery, though the Officer is not intereſted, and his Anſwer cannot be read againſt the Company, and he may be examined as a Witneſs and Plaintiff can have no Decree againſt him; yet as his Anſwer may tend to a Diſcovery, as he may be proſecuted for Perjury and Company cannot, and as his Anſwer may direct Plaintiff to draw Interrogatories, he ſhall not demur, but ſhall anſwer. *Wych* v. *Meal*, *T.* 1734. 3 *P. W.* 311.]

[If a Bill is brought for the Recovery of a Curioſity found in Plaintiff's Manor, and ſold to Defendant undefaced; Defendant cannot demur, tho' Plaintiff might have *Trover* for the Value, or *Detinue* for the Thing itſelf. *D. Somerſet* v. *Cookſon*, *M.* 1735. 3 *P. W.* 390.]

It is not good Cauſe of Demurrer to a Bill brought for an Account of perſonal Eſtate that there is a Suit depending in the Spiritual Court for Adminiſtration, for they have no Way of ſecuring the Effects in the mean Time. *Phipps* v. *Steward*, *H.* 1737. 2 *Atkyns* 285.

[Demurrer lies not to a Bill for Diſcovery of what Goods Defendant bought of Plaintiff's Agent, and what remains unpaid, and for Payment of it. *Liſſet* v. *Reave*, *T.* 1742. 2 *Atkyns* 394.]

The Plaintiff cannot demur to an Anſwer tho' it draws a Matter into Examination, which was ſettled before by a Decree; but ought to move for an Order to reſtrain ſuch Examination. *R. Ca. Ch.* 56.

So the Defendant cannot demur, if he is in Contempt, or anſwers by Commiſſion.

[A Defendant cannot demur and plead, or demur and anſwer, to the ſame Part of a Bill; for the Plea or Anſwer over-rules the Demurrer. *Jones* v. *E. Strafford*, *M.* 1730. 3 *P. W.* 79.]

[So if to a Bill for an Account of Rents and Profits, to which Diſcovery is incident, the Demurrer, as to ſo much as ſeeks an Account from a certain Time, is

is that Plaintiff has his Remedy at Law; and the Plea, as to ſo much as ſeeks an Account before filing ſupplemental Bill, is the Statute of Limitations; the Demurrer and Plea ſhall be both over-ruled. *Dormer* v. *Forteſcue*, *H.* 1741. 2 *Atkyns* 282.]

[If a Demurrer is over-ruled, Defendant may afterwards inſiſt on the ſame thing in his Anſwer. *Ibid.*]

[The Court will not determine the Conſtruction of a Will on Demurrer, if there is any Doubt, but will over-rule it without Prejudice to Defendant's inſiſting on the ſame Matters by Anſwer; but if on the Face of the Bill Plaintiff has no Title, the Court will determine on Demurrer. *Brentford* v. *Edwards*, *H.* 1750. 2 *Vezey* 243.

[A Demurrer bad in Part is void for the Whole. *E. Suffolk* v. *Green*, *T.* 1739. 1 *Atkyns* 450.

[So if a Truſtee in an uſurious Bond Defendant to a Bill for Diſcovery, and to perpetuate Teſtimony, demurs to both it is bad; had it been only to the Diſcovery, good. *Ibid.*]

[A Demurrer for want of Juriſdiction is informal and improper, Defendant ſhould plead to the Juriſdiction. *Roberdeau* v. *Rous*, *M.* 1738. 1 *Atkyns* 543.]

[Length of Time is not proper Matter for a Demurrer, but for a Plea. *Gregor* v. *Moleſworth*, *M.* 1740. 2 *Vezey* 109.]

[If Defendant anſwers to Part of the Diſcovery, he cannot demur to other Part. *Abraham* v. *Dodgſon*, *H.* 1740. 2 *Atkyns* 157.]

[But Defendant may anſwer to the Diſcovery, and demur to the Relief. *Ibid.*

[The Court cannot let a Demurrer ſtand for an Anſwer. *Anon.* *T.* 1747. 3 *Atkyns*. 530.]

[If Defendant has an Order to plead, anſwer or demur but not to demur alone, and demurs to the Bill as containing inconſiſtent Matters, and anſwers only to the Combination and Confederacy, it is not anſwering according to the Order. *Semb. ſed Q.* For if he makes other Anſwer he over-rules *ſuch* Demurrer. *Done* v. *Peacock*, *H.* 1750. 3 *Atkyns* 726.]

[If the Bill charges, that by producing a Deed under which Defendant claims it will appear it was made by a Tenant for Life only, and Defendant does not plead he is a Purchaſer, but demurs to the whole, it is not good. *Stroud* v. *Deacon* *T.* 1747. 1 *Vezey* 37.

[Defendant cannot demur to a Bill for Partition of Tithes, for this Court can divide them. *Baxter* v. *Knollys*, *T.* 1750. 1 *Vezey* 494.

[No Benefit of Exception can be ſaved on a Demurrer. *Gregor* v. *Moleſworth*, *M.* 1740. 2 *Vezey*. 109.]

[The Particulars which are demurred (or pleaded) to, muſt be diſtinguiſhed; it is not enough to ſay, as to ſo much of the Bill as is not after anſwered, *&c.* *Chetwynd* v. *Lindon* *T.* 1752. 2 *Vezey* 450.]

(H. 2.) How put into Court, *&c.*

A Demurrer may be put into Court upon a general *Dedimus*.

Or under the Hand of Counſel only, without Commiſſion, or in Perſon. *Ord. per Cla. Rules and Orders of Chancery* 96.

[Defendant may demur at the Bar *ore tenus*, (tho' he has before put in a Demurrer which is over-ruled) and in that Caſe it ſhall be without Coſts on either ſide. *Tourton* v. *Flower*, *T.* 1735. 3 *P. W.* 369.]

But after an Attachment with Proclamation, it ſhall not be received without Leave of the Court, upon Motion and Satisfaction for the Delay. *Ord. per Cla. Rules and Orders of Chancery* 99. Nor after Motion for Time to anſwer.

Yet all Contempts being pardoned by a general Pardon, a Demurrer was allowed after Proclamation returned. *Ca. Ch.* 238.

A Demurrer ought to ſhew the Cauſes, for which it is demurred. *Ord. per Cla. Rules and Orders of Chancery* 97.

Yet a Bill may be diſmiſſed, at the Hearing, for Cauſes not ſhewn upon the Demurrer, upon Payment of Coſts for the Cauſes over-ruled. *Vide* 1 *Ver.* 78. *Vide Practical Regiſter in Chancery* 133. *Vide Rules and Orders of Chancery* 97.

Otherwiſe, if the Defendant had not demurred, but only pleaded. *Vide* 1 *Ver.* 78, 79.

There cannot be a Demurrer to a *Subpæna* in the Nature of a *Scire Facias*; for a *Subpæna* is no Record. *Ca. Ch.* 50.

Nor to an Anſwer, which would cauſe a Re-examination of Matters before ſettled. *Ca. Ch.* 56.

The Plaintiff, within eight Days after a Demurrer, may amend his Bill, upon Payment of 20*s.* to the Defendant's Clerk. *Vide Practical Regiſter in Chancery* 133.

Or he may diſmiſs his Bill upon Payment of 40*s.* without Motion; which will be no Impediment to a new Bill. *Vide Practical Regiſter in Chancery* 133.

So by Order in the *Exchequer*, if the Plaintiff within two Days before the Time fixed for Hearing, gives Notice to the Defendant that he admits the Demurrer, and pays 20*s.* Coſts, the Defendant ought not to have it heard. *Vide Rules and Orders in Exchequer* 5. *Rule* 11.

So, if the Plaintiff, in ſuch Time, gives Notice that he will reply to the Plea, he may reply within a Week without Coſts; otherwiſe the Defendant ſhall be diſmiſſed with 30*s.* Coſts. *Ibid.*

If the Plaintiff in *Chancery* does not amend or diſmiſs his Bill, the Defendant ſhall enter his Demurrer with the Regiſter, to be argued in Court within eight Days after the filing, otherwiſe it will be diſallowed *ex curſu*, as for Delay, and the Plaintiff ſhall have a *Subpæna* for another Anſwer, and 40*s.* Coſts. *Vide Rules and Orders of Chancery* 97. *Vide Practical Regiſter in Chancery* 134.

After ſuch a Diſallowance, it ſhall not be argued without Motion and Leave of the Court. *Vide Rules and Orders of Chancery* 97.

If, upon Debate the Demurrer be allowed, the Bill ſhall be diſmiſſed with Coſts. *Vide Practical Regiſter in Chancery* 133, 4.—So, by Order in the *Exchequer*. *Vide Rules and Orders in Exchequer* 4, 5. *Rule* 9.

But there ſhall be no Coſts, if the Demurrer comes in upon a *Dedimus*. *Ord. per Cla. Vide Rules and Orders of Chancery* 96. 1 *Ver.* 282. *Vide Practical Regiſter in Chancery* 134.

If a Demurrer, or Plea be allowed to Part, the Plaintiff ſhall pay 30*s.* Coſts.

If a Demurrer be over-ruled, the Defendant ſhall pay 5 Marks for Coſts. *Ord. per Cla. Rules and Orders of Chancery* 96. *Vide Practical Regiſter in Chancery* 133.

So, if it be over-ruled for the Cauſes alledged, tho' the Bill be diſmiſſed for another Cauſe. *Ibid.*

So by Order in the *Exchequer*, if it be over-ruled, or not ſet down before the *Saturday* ſev'night after it is put in, the Defendant ſhall pay 40*s.* and rejoin *gratis*, and join in Commiſſion. *Vide Rules and Orders in Exchequer* 4. *Rule* 9.

Or if the Defendant two Days before the Time fixed for the Hearing his Plea or Demurrer, anſwers and gives Notice thereof to the Plaintiff's Attorney, he ſhall pay only 20*s.* Coſts. *Vide Rules and Orders in Exchequer* 5. *Rule* 9.

If the Demurrer be long and frivolous, the Court orders the Defendant to pay 5*l.* for Coſts, and that no Pleading be afterwards received under the Hand of the ſame Counſel.

If the Demurrer be for want of Title, and the Defendant anſwers to ſeveral Parts of the Bill, he thereby over-rules his Demurrer. *Semb.* 1 *Ver.* 90.

If the Demurrer be for want of Parties, where the Bill is for a Diſcovery of other Parties concerned in Intereſt, it will be over-ruled. 1 *Ver.* 95.

(I.) Plea.

(I. 1.) What is a good Plea, and what not.

[THE Defence proper for a Plea muſt be ſuch as reduces the Cauſe to a particular Point, and thence creates a Bar to the Suit, for not every good *Defence* in Equity is likewiſe good as Plea. *Chapman* v. *Turner*, 1739. 1 *Atkyns* 54.]

The

The Defendant may plead to the Bill;

To the Jurisdiction of the Court; as, *that the Parties dwell within a County Palatine, and the Suit is for Land there, or Matters local.* Semb. Ca. Ch. 41. Vide Franchises, (D. 9.)

But when only one Party dwells there, or it be for a Thing personal, it is no Plea. *Ca. Ch.* 41.

So it is no Plea, *that the University has Conusance in all Causes in Law or Equity, where a Scholar is a Party*, for that does not extend to Matters of meer Equity. *R.* 2 *Vent.* 362.

[Plea to the Jurisdiction of Chancery, (or of any other of the King's superior Courts of general Jurisdiction) must shew what other Court has Jurisdiction. *E. Derby* v. *D. Athol, H.* 1748. 1 *Vezey* 202.]

[A Plea which covers too much, cannot be allowed for Part; as, a Plea to the Jurisdiction, where Plaintiff has a Right to a Discovery, tho' not to Relief. *Ibid.*]

[Or if a Rectory is devised to a College, *in Trust*, to present the senior Divine then Fellow, Defendant cannot plead to the Jurisdiction, as being in the Visitor. *Green* v. *Rutherforth, P.* 1750. 1 *Vezey* 462.]

[But if an Information is brought for Relief, against an undue Election to a Fellowship in a College, Defendant may plead that there is a Visitor who has the sole Determination of such Matters. *Attorney-General* v. *Talbot, H.* 1747. 3 *Atkyns* 662. 1 *Vezey* 78.]

To the Disability of the Plaintiff; as, *that he is excommunicated*; and that shall be shewn under the Seal of the Ordinary. *Vide Practical Register in Chancery* 277, 8.

[That Plaintiff is an Alien born, and an Alien Infidel, not of the Christian Faith, is not a good Plea to a Bill for a personal Demand. *Ramkissenseat* v. *Barker* 1737. 1 *Atkyns* 51.]

[In the Plea of, *an Alien*, Defendant must aver that the Person was an Alien, or it is no Bar. *Burk* v. *Brown, T.* 1742. 2 *Atkyns* 397.]

[Plea of Conviction of Capital Offence, must be judged with equal Strictness here, as if at Common Law. *Ibid.*]

[Therefore, that *A.* gave *B.* a mortal Wound, of which, *&c.* without saying in what Part, is bad. *Ibid.*]

[Or if it says he was tried at the Assises, without saying the Person who tried him had a Commission of *Oyer* and *Terminer*, it is bad. *Ibid.*]

That he is outlawed in another Cause; and the Outlawry shall be shewn *sub pede sigilli*. Vide Practical Register in Chancery 276.

But *Outlawry in the same Cause for which Relief is prayed*, is no Plea, but shall be disallowed of Course, as for Delay, and the Plaintiff shall pursue his Process for other Answer, and 5 Marks Costs. *Ord. per Cla. Rules and Orders of Chancery* 97. *Vide Practical Register in Chancery* 277.

And when Outlawry in another Cause is reversed, the Plaintiff upon Payment of 20*s.* to the Defendant shall take a *Subpœna* against him to answer the same Bill. *Ord. per Cla. Rules and Orders of Chancery* 98. *Vide Practical Register in Chancery* 277.

So, by Order in the *Exchequer*, if a Plea of Outlawry be admitted, or allowed, and the Outlawry be reversed, the Plaintiff paying the Costs, shall take out a new *Subpœna* to answer his Bill. *Vide Rules and Orders in Exchequer* 5. *Rule* 10.

If one Defendant pleads Outlawry in the Plaintiff, it is good only for himself. *Ca. Ch.* 3.

Outlawry of an Executor is no Plea to a Suit as Executor. 1 *Ver.* 184.

[Plea for want of Parties, is in Bar to the whole Bill, Discovery and Relief. *Plunket* v. *Penson. T.* 1740. 2 *Atkyns* 51.]

[Plea that the Bill is only against Representative of real, and not of personal Estate, must be allowed, tho' suspected only for Delay. *Ibid.*]

[Unless it is suggested that the Representation is contesting in the Ecclesiastical Court. *Ibid.*]

[It is a good Plea to a Bill for Discovery of *Assets*, that the Administrator is not a Party, tho' he is acknowledged to be insolvent. *Ashhurst* v. *Eyre, P.* 1740. 2 *Atkyns* 51.]

So,

So a Defendant may plead *Another Suit depending in the ſame, or another Court for the ſame Cauſe.* Ord. per Cla. Rules and Orders of Chancery 98, 99. Ca. Ch. 241.

[Plea that another Action is depending in another Court for the ſame Thing, is bad; for Plaintiff need not make his Election till Defendant has anſwered. *Jones* v. *E. Strafford, M.* 1730. 3 *P. W.* 79.]

[That the Bill is for the ſame Matter for which Plaintiff brought another Bill, is not a good Plea, if the laſt is brought in a different Right, as, if the firſt is as Executor of Adminiſtrator, the ſecond as Adminiſtrator *de bonis non &c.* of Inteſtate. *Huggins* v. *York-Buildings Company, T.* 1740. 2 *Atkyns* 44.]

[To ſupport a Plea of a former Decree, ſo much of the former Bill and Anſwer muſt be ſet forth, as to ſhew the ſame Point was then in Iſſue. *Child* v. *Gibſon, T.* 1743. 2 *Atkyns* 603.]

[A Decree in a former Suit for the ſame Matter, cannot be pleaded till it is inrolled. *Anon.* 1754. 2 *Atkyns* 809.]

[But it may be inſiſted on by way of Anſwer. *Kenſey* v. *Kenſey, T.* 1754. 2 *Vezey* 577.]

[A former Decree, ſigned and inrolled, in which Plaintiff was an Infant, is a good Plea, for an Infant Plaintiff is bound by a Decree as one of Age. *Gregory* v. *Molſeworth, H.* 1747. 3 *Atkyns* 626.]

Or, *Another Bill diſmiſſed for the ſame Cauſe.* Vide 1 Ver. 310.

Tho' the Decree for the Diſmiſſion be not ſigned, or inrolled. 1 *Ver.* 310.

[If the Repreſentative of a Co-Adminiſtrator brings a Bill of Revivor and ſupplemental Bill, for the ſame Thing that the two Adminiſtrators had brought one for before, which, upon the Death of one, the other had diſmiſſed, ſuch Diſmiſſion is a good Plea. *Bowden* v. *Beauchamp, M.* 1740. 2 *Atkyns* 82.]

[Plea of Decree of foreclоſure, and Non-payment, is not good, if there has been no final Order to foreclоſe, whatever Length of Time has elapſed; but it may be a good Defence. *Senhouſe* v. *Earl, T.* 1752. 2 *Vezey* 450.]

In the *Exchequer*, if the Plaintiff admits this Plea of a former Suit depending, he ſhall pay 40*s.* If it is allowed on the Hearing by the Court, 3*l.* Coſts. *Vide Rules and Orders in Exchequer* 61. *Rule* 13.

If there be another Suit for the ſame Cauſe at Common Law, the Defendant may move, that the Plaintiff may make his Election at a Day to be fixed by the Court, where he will proceed.

So the Defendant may, in *Chancery*, plead *Another Suit diſmiſſed in the Exchequer for the ſame Cauſe.* Vide Ca. Ch. 155, 6.

Otherwiſe, if the Diſmiſſion was, *without Prejudice in Law, or Equity.* R. Ca. Ch. 156.

[A Bill dropt for want of Proſecution, cannot be pleaded as a Decree of Diſmiſſion to another Bill; nor is it ſufficient that the Court *implied* there was no Title when they diſmiſſed the Bill, an abſolute Determination of the Court that Plaintiff had no Title, muſt be ſhewn. *Brandlyn* v. *Ord, M.* 1738. 1 *Atkyns* 571.]

A Plea of a former Suit ought to ſhew, that the Defendant was ſerved with Proceſs, or appeared. *Abr. Ca.* 39.

But to a Bill by *A.* againſt *B.* for a Foreclоſure, *a former Bill in the Exchequer by B. for Redemption*, is no Plea. 1 *Ver.* 220.

A Plea of former Suit ſhall be without Oath; for it ought to be referred to a Maſter whether there be ſuch a Suit. 1 *Ver.* 332.

[A Plea of another Suit depending for the ſame Matter, muſt ſet forth when it was inſtituted. *Foſter* v. *Vaſſal, M.* 1747. 3 *Atkyns* 587.]

[If a Creditor who has come in and proved his Debt before the Maſter, under a Decree at the Suit of another Creditor, brings a new Bill, the former Suit is a good Plea. *Neve* v. *Weſton, T.* 1747. 3 *Atkyns* 557.]

[If there is a Decree for Tithes, and the Account is depending before the Maſter, Defendant may plead this Suit and Decree to a new Bill brought; for the Account in this Court is taken down to the Time of making the Report. *Bell* v. *Read, M.* 1747. 3 *Atkyns* 590.]

[If

[If an Executor aſſents to a ſpecific Legacy, and the Legatee brings *Trover*, and recovers large Damages; the Verdict and Judgment is a good Bar to a Bill by Executor to ſet them aſide. *Williams* v. *Lee*, *T.* 1745. 3 *Atkyns* 223.]

[A Plea of a foreign Sentence in a Commiſſary Court in *France* (the *Bureau des Actions*) is bad. *Gage* v. *Bulkely*, *H.* 1744. 3 *Atkyns* 215.]

And it need not aver, that the former Suit is depending; for it ſhall be referred, and if ſet down to be argued, is admitted. 1 *Ver.* 332.

[If Parties have agreed to make the Submiſſion to an Award, a Rule of Court, and to be reſtrained from bringing a Bill in Equity, Arbitrators may plead in Bar the Award, tho' it ſhould be defective in Point of Law. *Lingood* v. *Croucher*, *T.* 1742. 2 *Atkyns* 395.]

[If a Bill is brought againſt an Arbitrator, for Diſcovery of the Grounds of his Award, he may plead he is not obliged to ſet them forth. *Anon.* *T.* 1748. 3 *Atkyns* 644.[

[An Award (unleſs there is Colluſion or groſs Miſbehaviour) is a good Plea to a Diſcovery as well as to the Merits. *Tittenſon* v. *Peat*, *T.* 1747. 3 *Atkyns* 529.]

[If a Plea of an Award is allowed to a Bill, praying a general Account, yet the Plaintiff is not precluded at the Hearing, from objecting to the Award for Fraud or Partiality in the Arbitrators. *Lingood* v. *Eade*, *M.* 1742. 2 *Atkyns* 501.]

[If one Partner brings Bill for Diſcovery and Relief, againſt another, who pleads that by their Articles, all Differences relating to their Partnerſhip ſhould be referred, that the Bill relates to ſuch only, that they have not been ſubmitted, nor has Plaintiff offered, tho' Defendant has been always ready, *&c.* this is not good, for there ſhould have been a Clauſe impowering Arbitrators to examine Parties and Witneſſes on Oath, which by this they cannot do. *Wellington* v. *Mackintoſh*, *P.* 1743. 2 *Atkyns* 569.]

So a Defendant ſhall plead *the Statute of Limitations*. Vide Practical Regiſter in Chancery 279.

[Where Defendant has been in Poſſeſſion of Eſtate *pur autre vie* for 30 Years, the *Statute of Limitations* is a good Plea, tho' Plaintiff had not the Leaſe in his Poſſeſſion, and the Defendant ſets out that the Leaſe had been renewed. *Low* v. *Burron*. *P.* 1734. 3 *P. W.* 262.]

[The Statute of Limitations is a good Plea (but not a good Demurrer) to a Bill to redeem after the Mortgagee has been in Poſſeſſion, many (as 30) Years. *Aggas* v. *Pickerill*, *T.* 1745. 3 *Atkyns* 225.]

[Inteſtate dies abroad, leaving Infant Son, Adminiſtration is granted during the Minority to *A.* who does not ſue, the Son Adminiſtrator *de bonis non*, within ſix Years of coming of Age ſues, yet the *Statute of Limitations* may be pleaded againſt him. *Wych* v. *Eaſt-India Company*, *T.* 1734. 3 *P. W.* 309.]

[A Corporation may plead the *Statute of Limitations*, as well as private Perſons. *Ibid.*

[The *Statute of Limitations* may be pleaded, tho' an Original has been filed, if there have been no Proceedings on it for ſix Years. *Lacon* v. *Lacon*, *T.* 1742. 2 *Atkyns* 395.]

[To a Note to pay an Annuity, or a Sum three Years after Date, or a Sum by Inſtalments, the Plea muſt not be, did not promiſe, but that the Cauſe of Action did not accrue within ſix Years. *Anon H.* 1743. 3 *Atkyns* 70.]

[Plenarty for ſix Months is a good Plea to a Bill, praying that Defendant, who was preſented by a Truſtee in breach of Truſt, may be compelled to reſign. *Boteler* v. *Allington*, *H.* 1746. 3 *Atkyns* 453.]

[The *Statute of Limitations* is no Plea where the Bill charges Fraud, but it ſhould charge that the Fraud was diſcovered within ſix Years before bringing the Bill. *S. S. Company Wymondſell*, *M.* 1732. 3 *P. W.* 143.]

The *Statute of Limitations* cannot be pleaded to the Diſcovery *when* the Debt was due, tho' it may be to the Debt itſelf. *Mackworth* v. *Clifton*, *T.* 1740. 2 *Atkyns* 51.]

[A Fine and Non-claim is not a good Bar to a Plaintiff's Title, if a Suit has been pending in this Court, in a Caſe where there is proper Matter of Equity. *Baker* v. *Pritchard*, *T.* 1742. 2 *Atkyns* 387.]

[If

[If a Man enters upon an Eſtate on the Footing of a Truſtee, and performs the Truſts, but never makes any Declaration of it, and then levies a Fine, a Plea of this Fine and Non-claim ſhall not be allowed to bar a Remainder-Man. *Shields* v. *Atkyns*, T. 1747. 3 *Atkyns* 560.[

[The *Statute of Limitations* cannot be pleaded to a Bill for Diſcovery of a Title, and charging Fraud, but Defendant muſt anſwer to the Fraud. *Bicknell* v. *Gough*, T. 1747. 3 *Atkyns* 558.]

And, *the Privilege of the Univerſity to have Conuſance of Pleas.* Ca. Ch. 237. Vide 2 Vent. 362.

That the Bill requires an Anſwer to a Matter, which ſubjects the Defendant to a Penalty, or accuſes him of a Crime. 1 Ver. 109.

[If a Diſcovery is prayed of a Contract to purchaſe an Eſtate, deviſed to the Vendor, againſt whom there has been a Verdict, and a Receiver put in Poſſeſſion by Chancery, to both which this Contract was ſubſequent, it is within *Stat.* 32 *H.* 8. *c.* 9. againſt ſelling pretenced Titles, which Statute Defendant may plead.] *Sharp* v. *Carter*, T. 1735. 3 *P. W.* 375.]

[If a Bill is brought for Relief againſt a Policy of Inſurance, ſuggeſting the Ship was fraudulently loſt, and that ſhe had only Wool on board, and interrogating what Goods were on board, Defendant may plead the Statutes making Exportation of Wool penal; but if any other kind of Goods are mentioned in the charging Part, Defendant muſt give ſome Anſwer to that. *Duncaif* v. *Blake*, *H.* 1737. 1 *Atkyns* 52.]

[If a Plea of the Statute of Frauds, as to a Diſcovery, is coupled with an Anſwer admitting the Facts, the Plea muſt be over-ruled. *Cottington* v. *Fletcher*, *H.* 1740. 2 *Atkyns* 155.]

So if the Bill be for a Redemption, upon a Suggeſtion, *that A. conveyed to the Father of the Defendant in Mortgage, who agreed to make a Defeazance*; a Plea, *that the Land was ſettled in Marriage on the Defendant, for a Conſideration paid, without Notice of ſuch Agreement*, is good. *R. Ch. R.* 9.

[If to a Bill by a Creditor under a Will, for Sale of Lands for Payment of Debts, for Diſcovery of Title to Lands in Widow's Poſſeſſion, ſhe pleads a Deed of Settlement and Jointure, and offers to diſcover if Plaintiff will confirm, it is bad, unleſs ſhe ſet forth the particular Lands, and the Date of the Deed. *Chamberlain* v. *Knapp*, *H.* 1735. 1 *Atkyns* 52.]

So a Defendant ſhall plead, to a Bill for Diſcovery of a Title, *That he is a Purchaſer for a valuable Conſideration, without Notice of the Plaintiff's Incumbrance.* 2 Vent. 361. Vide Poſt, (4 I. 3, 4.)

And need not ſhew for what Conſideration. *R. Ca. Ch.* 34. *R. Hard.* 510.

[A valuable Conſideration ſet forth by Defendant, protects him from giving an Anſwer to a Title ſet up by Plaintiff, but Plea of bare Title, without ſetting forth a Conſideration, will not. *Brereton* v. *Gamul*, *H.* 1741. 2 *Atkyns* 240.]

So it need not mention the Time of the Purchaſe. *R. Hard.* 510.

But if the Plea does not add, *that he was a Purchaſer, without Notice*, it is bad. *R.* 2 *Vent.* 361. *Semb.* 1 *Ver.* 179.

[In a Plea of a Purchaſe, if Defendant ſay he had no Notice at the Time of the Purchaſe, he need not ſay he had it not at any Time before. *Jones* v. *Thomas*, *H.* 1733. 3 *P. W.* 243.]

And, *without Notice at the Time of the Purchaſe*, is not ſufficient, without ſaying, *that he had no Notice when the Conveyance was executed.* R. Ca. Ch. 34.

[If a Purchaſe for valuable Conſideration without Notice, is pleaded to a Bill, which charges particular and ſpecial Notice, a general Denial of Notice is not ſufficient, it muſt deny as ſpecially, or it will be bad. *Radford* v. *Wilſon*, *M.* 1754. 3 *Atkyns* 815.]

[If to a Bill for Poſſeſſion, Defendant pleads Purchaſe for valuable Conſideration, and that the Money is paid, *or bona fide ſecured to be paid*, and it is in Fact only ſecured; the Plea ſhall be over-ruled, for he has now Notice of Plaintiff's Title. *Hardington* v. *Nicholls*, *H.* 1745. 3 *Atkyns* 304.]

And Notice ſhall be by way of Anſwer, not by Plea. *R.* 2. *Ca. Ch.* 161.

[If Defendant in Plea of Purchaſe for valuable Conſideration omits to deny Notice, and Plaintiff replies, Defendant need only prove his Plea, for Plaintiff might have ſet it down to be argued. *Harris* v. *Ingledew*, *H.* 1730. 3 *P. W.* 91.]

[In pleading a Purchaſe or Mortgage, the Defendant muſt ſhew that the Vendor or Mortgagor pretended to be ſeized in Fee. *Head* v. *Egerton*, *P.* 1734. 3 *P. W.* 280.]

[On a Plea of a Purchaſe for a valuable Conſideration without Notice of Plaintiff's Title, it is ſufficient to aver, that the Perſon who conveyed was ſeiſed, or pretended to be ſeiſed, when he executed the Purchaſe Deeds; but where Fine and Non-Claim is the Bar, the Averment muſt be that he was actually ſeiſed; ſeiſed *ut de libero Tenemento* is ſufficient. *Story* v. *Ld. Windſor*, *T.* 1743. 2 *Atkyns* 630.]

So, if a Defendant pleads *a Settlement after Marriage, purſuant to an Agreement before*, the Plea ought to ſhew what the Agreement was. 1 *Ver.* 139.

If the Defendant *pleads, that he is a Purchaſer*, bonâ fide, *without Notice, and denies the Fraud alledged in the Bill*, it is not good, unleſs he *anſwers* to the Fraud. 1 *Ver.* 185.

If he does not ſhew the Vendor ſeiſed and poſſeſſed, it is bad. 1 *Ver.* 246.

If he pleads it to more than was ſettled for what is then due, it will be bad. *Vide Ch. R.* 143.

[If under one Roof there were formerly a Corn-Mill and a Fulling-Mill, which paid a *Modus* of 6*s.* 8*d.* and the Fulling Wheels are taken away, and two Corn-Mills are put in its Place, and a Bill is brought for Tithe of three Mills, and the *Modus* is pleaded for the one Mill, it is bad in Form and in Subſtance. *Talbot* v. *May*, *M.* 1743. 3 *Atkyns* 17.]

So to a Bill by an Executor for an Account of the Profits of an Eſtate *pur auter vie*, the Defendant may plead, *That the Teſtator permitted him to take the Profits for a Debt, upon which he entred, and, the Teſtator being dead, has Title as Occupant.* R. 2 Vent. 364.

So to a Bill for a Diſcovery, the Defendant ſhall plead, *that what he knew was only as Counſel, Arbitrator, &c.* R. Ca. Ch. 277.

So the Defendant may plead, *that he being a Mortgagee, upon hearing of prior Incumbrances, purchaſed an Eſtate prior to the Plaintiff's*, with an Offer to aſſign, on Payment of the Money due upon both. *R. Ca. Ch.* 150. *Vide Poſt*, (4 A. 10.)

So, if a Mortgagee takes a Prior Eſtate in Fee, he ſhall not be obliged to make Diſcovery. *D. Hard.* 173.

Otherwiſe, where he purchaſes other Incumbrances. *R. Hard.* 172.

So, for a Defendant to a Bill for Diſcovery of the Goods of a Bankrupt, it ſhall be a good Plea, *That he purchaſed them* bonâ fide, *for a valuable Conſideration, before a Commiſſion, and before Notice of the Bankruptcy.* R. 1 Ver. 27.

[Plea of a ſtated Account, muſt ſhew it was in Writing, and what the Balance was. *Burk* v. *Brown*, *T.* 1742. 2 *Atkyns* 397.]

[A Plea of a ſtated Account, as to all Matters *herein before accounted for*, is bad; it ſhould aver, that it is juſt and true to the beſt of Defendant's Knowledge and Belief. *Anon. H.* 1743. 3 *Atkyns* 70.]

[If a Bill impeaches an Account, and charges that Plaintiff has no Counterpart of it, Defendant, if he pleads a ſtated Account, muſt annex a Copy of it. *Hankey* v. *Simpſon. H.* 1745. 3 *Atkyns* 303.]

But to a Bill to be relieved from a Bond for the Balance of an Account, a Plea, *that the Account was ſtated with his Teſtator, and the Vouchers delivered up, and a Bond given for the Balance*, was over-ruled. *Ca. Ch.* 262. *Vide Poſt*, (2 A. 3.)

Bill for an Injunction to an Action for Waſte, becauſe the Waſte alledged was an Improvement; Plea of the Statute of *Glouceſter*, which allows an Action for Waſte againſt the Leſſee, was over-ruled. *Ch. R.* 135.

Bill for Money ſecured by Mortgage, and alſo by Bond; Plea, *that the Plaintiff, in an Action at Law upon the ſame Bond, was nonſuited*, is not good. *Vide* 1 *Ver.* 77, 8.

Bill for Relief againſt a Policy, to pay without Abatement, if *A.* died before *M.*; Plea, *that A. did die before*, over-ruled. *R.* 2 *Ver.* 10.

Bill to be relieved againſt a Verdict at Law; Plea *of the Verdict and Judgment, and that the Matter is conuſable at Law, and the Plaintiff did there inſiſt upon it*, over-ruled. *R.* 2 *Ver.* 146, 155.

[If a Bill is brought to ſet aſide a Will for Fraud, and for a Receiver, and Defendant pleads, that the Will was duly executed, and ought to prevail till found otherwiſe at Law, and therefore no Receiver ſhould be appointed till then, the Plea is good as to the firſt Part, but not as to the latter. *Anon. M.* 1743. 3 *Atkyns* 17.]

Bill for an Account of Goods ſold by the Sheriff upon an Execution at an Under-value; Plea, *that they were offered to the Plaintiff at the ſame Value*, is good. *R. Ch. R.* 111.

[If a Bill is brought againſt Adminiſtrator for a Diſtribution, it is not a good Plea that he is not obliged to it within the Year; but it ſhall ſtand for Anſwer with Liberty to except. *Hart* v. *King, in Sc. T.* 1720. *Bunb.* 64.]

[If the Plea is to Diſcovery and Relief, when the Bill prays only a Diſcovery, it is bad. *Aſgil.* v. *Dawſon*, in *Sc. H.* 1720. *Bunb.* 70.]

[A Plea may be bad in Part, yet not bad in the Whole. *Duncalf* v. *Blake H.* 1737. 1 *Atkyns* 52.]

[A Bill, ſo far as not contradicted by the Plea, muſt be taken to be true. *Plunket* v. *Penſon, T.* 1740. 2 *Atkyns* 51.]

[If a Bill is brought for Payment of a Note of an Inteſtate, charging that Adminiſtrator promiſed to pay as ſoon as he got in the Effects, a Plea that Defendant made no Promiſe to pay, is bad, as too general; it ſhould be, no Promiſe to pay out of the Aſſets. *Anon. H.* 1743. 3 *Atkyns* 70.]

[If a Plea is to the Relief only, and is directed to ſtand for an Anſwer, the Words, *with Liberty to except*, muſt be added, or it is allowing it a good Anſwer. *Maitland* v. *Wilſon, M.* 1754. 3 *Atkyns* 814.]

[A Plea containing Exception of Matters herein after mentioned is bad. *Salkeld* v. *Science, M.* 1750. 2 *Vezey* 107.]

[So, to a Bill for Account and Diſcovery, a Plea of Releaſe, farther and other than in the Plea ſet forth. *Ibid.*]

[Unleſs the only Sums mentioned in the Plea are alſo mentioned in the Releaſe, for that makes it the ſame, as if it had been ſaid, *farther than is in the Releaſe*, which is good in *Form*. *Ibid.*]

[But if there are Charges of Account made up, and Dealings which require Anſwer and Diſcovery, ſuch Plea of Releaſe is bad in Subſtance, for if allowed, Plaintiff could not except. *Ibid.*]

[If Defendant does not prove the Fact, neceſſary to ſupport the Plea, Plaintiff ſhall not loſe his Diſcovery, but the Court will order Examination on Interrogatories to ſupply it. *Brownſword* v. *Edwards, H.* 1750. 2 *Vezey* 243.]

(I. 2.) How put into Court, *&c.*

A Plea may be put in upon a general *Dedimus*.

Or under the Hand of Counſel only, if it be to the Juriſdiction, or to the Diſability of the Plaintiff. *Ord. per Cla. Rules and Orders in Chancery* 96.

The Plea ſhall be put in upon Oath of the Defendant. 2 *Ca. Ch.* 208.

But if the Matter of the Plea appears upon Record, it is not neceſſary; and therefore, a Plea of Outlawry ſhall be without Oath. *Ca. Ch.* 237. *Vide Practical Regiſter in Chancery* 274.

After an Attachment with Proclamation, no Plea ſhall be received without an Order of Court. *Ord. per Cla. Rules and Orders of Chancery* 99. *Vide Practical Regiſter in Chancery* 274, 5.

Privilege of the Univerſity to have Conuſance of Pleas ſhall be pleaded without Oath. *Ca. Ch.* 237.

So a Plea muſt be averred; otherwiſe it will be over-ruled, in the *Exchequer*. *Hard.* 160.

So

So a dilatory Plea ſhall not be allowed, where the Defendant is in Contempt, or anſwers by Commiſſion.

So a Defendant who pleads, ought to anſwer to a Fact, not covered by the Plea, or which ſupports his Plea. *Eq. Ca.* 185.

[If at hearing the Cauſe, Defendant has not ſupported his Plea by his Anſwer, Plaintiff may counterprove by reading the Anſwer, and ſo overturn the Plea: ſo at the Time of arguing the Plea, Plaintiff may counterprove by reading the Anſwer to ſhew Defendant has not ſufficiently ſupported his Plea. *Hildyard* v. *Creſſy*, *H.* 1745. 3 *Atkyns* 303.]

All Pleas to the Juriſdiction, or upon the Subſtance of the Bill, ſhall be determined in Court. *Ord. per. Cla. Rules and Orders of Chancery* 97. *Vide Practical Regiſter in Chancery* 282.

A Plea to the Juriſdiction, or founded upon the Subſtance of the Bill, ſhall be entred by the Defendant with the Regiſter, within eight Days, to be argued. *Ord. per Cla. Rules and Orders of Chancery* 97.

A Plea to the Diſability, the Plaintiff within eight Days after filing ſhall enter with the Regiſter to be argued, if he thinks it proper; and if he does not do it, the Defendant of Courſe ſhall take out Proceſs for five Marks Coſts. *Ord. per Cla. Rules and Orders of Chancery* 98. *Vide Practical Regiſter in Chancery* 277.

A Plea of another Suit depending, ſhall be referred to a Maſter; and if the Plaintiff does not procure his Report within one Month, his Bill ſhall be diſmiſſed with ſeven Nobles for Coſts. *Ord. per Cla. Rules and Orders of Chancery* 98. *Vide Practical Regiſter in Chancery* 281.

If the Report be againſt the Plaintiff, he ſhall pay five Pounds for Coſts. *Ibid.*

If a Plea be allowed upon the arguing, the ordinary Coſts againſt the Plaintiff are five Marks. *Ord. per Cla. Vide Rules and Orders of Chancery* 98.

But if the Plea comes in upon a *Dedimus*, tho' it be good, the Defendant ſhall not have Coſts. *Ord. per Cla. Rules and Orders of Chancery* 96. *Vide Practical Regiſter in Chancery* 134.

If the Defendant does not procure his Plea to the Juriſdiction, or upon the Subſtance of the Bill, to be entred with the Regiſter, within eight Days, it ſhall be diſallowed of Courſe, as for Delay; and the Plaintiff ſhall take out Proceſs for other Anſwer, and 40*s.* Coſts. *Ord. per Cla. Rules and Orders of Chancery* 97.

And ſuch Plea ſhall not be afterwards debated without the Order of the Court, upon Motion. *Ibid.*

If the Plea be over-ruled upon the arguing, the Defendant ſhall pay five Marks Coſts. *Ord. per Cla. Rules and Orders of Chancery* 96.

But the Court may order, that the Defendant ſhall not pay Coſts. *Ca. Ch.* 41.

Or, that the Plea be over-ruled, but that the Plaintiff ſhall not proceed farther than Anſwer, without Leave of the Court. *Ca. Ch.* 262.

Or, that the Defendants do anſwer, and their Plea to be conſidered at the Hearing of the Cauſe. *Ca. Ch.* 13.

So by Order in the *Exchequer*, if the Plea or Demurrer be not ſet down by the Defendant by the *Saturday* ſev'nnight after it is put in, or be over-ruled, it ſhall be diſallowed, and the Defendant ſhall pay 40*s.* Coſts, and after his Anſwer ſhall rejoin *gratis*, and join in Commiſſion. *Rules and Orders in Exchequer* 4. *Rule* 9.

If a Plea, in *Chancery*, be not ſet down, but the Plaintiff replies, and the Defendant joins in Commiſſion, and the Cauſe is heard, the Plea is waived. *Abr. Ca.* 41.

If the Plaintiff does not ſet down the Plea, nor the Defendant, but the Plaintiff replies to it generally, he admits the Plea good, if the Fact be true. 1 *Ver.* 72. [*Anon. M.* 18 *G.* 2. *Wilſ.* 82.]

If the Plea be in Abatement, and diſallowed, there ſhall be a *Reſpondeas Ouſter*. 1 *Ver.* 73.

If in Bar, be it allowed or diſallowed, it ſhall be peremptory. 1 *Ver.* 73.

Or there may be an Order, that it ſhall ſtand for an Anſwer, ſaving juſt Exceptions, upon which the Plaintiff ſhall reply, and the Defendant ſhall prove the Fact of the Plea. *Vide Practical Regiſter in Chancery* 283.

[If Defendant pleads and dies before Plea argued, it cannot be argued, but his Repreſentative muſt plead *de novo*. *Mickletbwaite* v. *Calverley*, *M.* 7 *G.* 2. *C. T. T.* 3.]

(K.) Anſwer.

(K. 1.) When it ſhall be filed.

IF the Defendant does not demur, or plead, he ſhall anſwer to the Bill.

If the Plaintiff give a Rule to the Defendant upon the Day after Coſts Day to make Anſwer, the Defendant ſhall anſwer within ſeven Days afterwards. *Vide Practical Regiſter in Chancery* 8.

Otherwiſe he ſhall have Time to anſwer till the End of the Term. *Vide Practical Regiſter in Chancery* 9.

And if the *Subpœna* was returned upon the laſt Return in Term, 'till the beginning of the next Term. *Ibid.*

But if it was returned at any other Return than the laſt, the Defendant ſhall anſwer within ſeven Days, tho' there be not ſo many within the Term, for the *Chancery* is always open, and tho' no Rule be given. *Ibid.*

So, if it be returned on a Day certain, tho' it be the laſt Day in Term.

Or, if it be returnable *immediate*, tho' ſerved on the laſt Day of the Term.

Yet if the Defendant takes out a Commiſſion, for the taking of his Anſwer in the Country, as he may of Courſe, he ſhall have Time 'till the Day after the firſt Coſts Day in the next Term; or, in *Trinity* Term, 'till the Day after the ſecond Coſts Day. *Vide Practical Regiſter in Chancery* 10.

So he may have longer Time, upon Motion and *Affidavit*, that he cannot anſwer, without a Sight of Writings, which are twenty Miles diſtant in the Country. *Vide Practical Regiſter in Chancery* 9.

Or, without Conference with others concerned. *Ibid.*

But if he have Time granted him to anſwer, when he is in Contempt; the Proceſs for Contempt proceeds, without a ſpecial Order. 1 *Ver.* 104.

[Defendant in Contempt may have leave to plead, anſwer and demur. *Town of Scarborough* v. *Jackſon*, *P.* 1728. *Bunb.* 251.]

[If Defendant in Contempt prays Time to anſwer, he ſhall enter his Appearance. *Ibid.* *Lord Berkley* v. *Verden*, *M.* 1730. *Bunb.* 290.]

[And he ſhall be deemed in Contempt, if the Time for anſwering be out, tho' no Attachment ſealed. *Ibid.*

By Order in the *Exchequer*, every Defendant ſhall file his Anſwer in eight Days after Appearance, if the Bill was filed in Term, or within two Days after if he does not pray a Commiſſion (by Entry under his Appearance) returnable the next Term. *Vide Rules and Orders in Exchequer* 3. *Rule* 6.

If he lives fifteen Miles diſtant from *London*, and the Appearance be upon the firſt Return of *Eaſter* or *Michaelmas* Term, the Commiſſion ſhall be returned before the End of the Term. *Ibid.*

[If Plaintiff in original Cauſe has not taken out Proceſs, he cannot compel Defendant, who files a croſs Bill, to anſwer him firſt. *Price* v. *Lord Cuningſby*, *H.* 1722. *Bunb.* 124.]

[If after an Anſwer is reported inſufficient, Defendant files croſs Bill, and Plaintiff amends, and obtains Orders to anſwer Amendments when Exceptions are anſwered, he waives his Priority; for the Pendency of the Suit, as to the amended Parts, is only from the Time of the Amendment. *Long* v. *Burton*, *M.* 1741. 2 *Atkyns* 218.]

[If *A.* files Bill againſt *B.* whoſe Plea is allowed; and *B.* files croſs Bill againſt *A.* whoſe Anſwer is reported inſufficient; *A.* loſes his Priority of Suit, and ſhall make good Anſwer to *B.* before *B.* anſwers an amended Bill of *A.* *Rattray* v. *Darley*, *H.* 1750. 3 *Atkyns* 724.]

(K. 2.) How it ſhall be made.

The Anſwer ought to be under the Hand of Counſel, who ought firſt to peruſe it. *Vide Practical Regiſter in Chancery* 6. *Vide Rules and Orders of Chancery* 93.

[By a general Order 27 *April*, 1748, all Anſwers ſhall be ſigned by the Parties ſwearing them, in the Preſence of the Maſter or of the Commiſſioners taking them.]

It ſhall be ſuccinct, and not ſcandalous. *Vide Practical Regiſter in Chancery* 6. *Vide Rules and Orders of Chancery* 93.

It muſt confeſs, avoid, deny, or traverſe all the material Parts of the Bill. *Vide Practical Regiſter in Chancery* 6.

[If a Bill is brought for Diſcovery only, to which Defendant pleads Fine and Non-claim, and the Bill is amended praying Relief, Defendant cannot put in a compleat Anſwer over again, for it might be referred for Impertinence, but he muſt refer to the former Anſwer; and this laſt Anſwer is to be conſidered as a Part of the Anſwer to the original Bill. *Hildyard* v. *Creſſey*, *H.* 1745. 3 *Atkyns* 303.]

It muſt be direct, as to the Act of the Defendant himſelf, charged to be done within ſeven Years, without ſaying, *To his remembrance*, or, *as he believes*, unleſs the Court, upon Exception, ſees Cauſe to diſpenſe with ſo poſitive an Anſwer. *Ord. per Cla. Rules and Orders of Chancery* 99. *Vide Practical Regiſter in Chancery* 7.

Yet, *that he did not receive more, to his Remembrance*, was allowed. 1 *Ver.* 470.

It muſt be without Evaſion: as, the Receipt of 100*l.* *&c.* ſhall not be anſwered literally; but the Defendant ſhall ſay, that he did not receive any Part, or, that he received ſo much, and not the Reſidue: for he ought to traverſe the Subſtance, *viz.* the Receipt. *Ord. per Cla. Rules and Orders of Chancery* 100. *Vide Practical Regiſter in Chancery* 8.

So, if a Fact be charged with divers Circumſtances, he ſhall anſwer to the Fact alledged; and it it is not ſufficient to deny that he did it, with ſuch Circumſtances, which is a Negative pregnant. *Ibid.*

Bill to make a Settlement, and diſcover Incumbrances upon the Land to be ſettled; if the Defendant denies the Agreement to make a Settlement, yet he ſhall anſwer to the Incumbrances immediately, without anſwering to the Incumbrances upon Interrogatories after it is determined, whether he agreed or not. R. 2 *Vent.* 357.

[Tho' a Perſon cannot compel another to ſet forth by what Title, nor under whom he claims, merely becauſe his lands lie next his, yet where the Diſpute is about Boundaries or Unity of Poſſeſſion, Defendant muſt ſet forth how he is intitled. *Champernoon* v. *Borough of Totneſs*, *M.* 1740. 2 *Atkyns* 112.]

Bill in the *Exchequer* for Tithes, if the Defendant by Anſwer, and not by Plea, inſiſts upon a Diſcharge by a *Modus*, he ought to anſwer to the Quantities and Values and what Lands he has, and it ſhall not be referred to an Examination by Interrogatories. *R. Hard.* 130.

[If the Anſwer admits Plaintiff intitled to all Tithes but of Corn and Grain, the Court will decree him Hay, without proving he ever received it. *Fox* v. *Bardwell*, *P.* 1733. *Bunb.* 327.]

If the Bill be againſt Huſband and Wife, they may anſwer ſeverally. 2 *Ca. Ch.* 39, 173.

But the Anſwer of the Wife is nothing worth, if the Huſband does not anſwer. 2 *Ca. Ch.* 173.

And if the Anſwer of the Wife confeſſes that which the Huſband denies, it ſhall not prejudice the Huſband. 2 *Ca. Ch.* 39.

[If the Huſband is run away ſince Appearance, and no Friend will be Guardian, the Wife may have Leave to anſwer without. *Glover* v. *Young*, *P.* 10 *G. Bunb.* 167.]

[A Huſband allowed to anſwer without his Wife, becauſe ſhe declared ſhe would not anſwer with him, and loved the Plaintiff better. *Murriet* v. *Lyon*, *T.* 10 *G. Bunb.* 175.]

[If a Husband brings a Bill against his Wife, she shall answer as a *Feme Sole*, and not by Guardian. *Ex Parte Strangeways*, *P.* 1747. 3 *Atkyns* 478.]

If a Bill is brought against a Jew, he shall be sworn upon the *Pentateuch* in the Presence of the Plaintiff's Clerk. 1 *Ver.* 263.

A Defendant being surprized in his Answer, before Replication, upon a Certificate and an *Affidavit* of Notice, shall be allowed to amend the Mistake. *Ca. Ch.* 29.

[An Answer may be amended before Issue joined. *Mullins* v. *Simmonds*, *H.* 1724. *Bunb.* 186.]

[An Answer was amended (by making a greater Quantity of Acres) after Issue joined and a Commission issued, on Defendant's paying all Costs, and taking a new Commission at his own Expence. *Berney* v. *Chambers*, *H.* 1727. *Bunb.* 248.]

[Answer refused to be amended (by altering the Day of Payment of a *Modus*) tho' Issue not joined, and the Day set right in a cross Bill. *Wortley Montague's Case*. *Ibid.*]

[An Answer amended by the Draught, where the Mistake was 250 or 300, for 25 or 30. *Bishop of Ely* v. *James*, *H.* 1730. *Bunb.* 295.]

[But refused to amend 86 for 68, where the Draught and Ingrossment agreed. *Ibid.*]

[If Attorney-General has put in the common Answer to a Bill of Interpleader (that he is a Stranger, and hopes the Interest of the Crown will be taken care of, *&c.*) he may withdraw it (on Motion) and put in another insisting on the particular Right of the Crown. *Errington* v. *Attorney-General et al'*. *P.* 1731. *Bunb.* 303.]

[Answer may be amended, if for Plaintiff's Benefit, and Defendant very old. *Holliday* v. *Nabb*, *M.* 1732. *Bunb.* 323.]

[A Defendant on particular Circumstances may have Leave to amend an Answer by adding a new Fact, as if the Answer refers to a Deed, to amend by adding that by the Custom of the Country where it was executed, it was deposited, so that an authentick Copy is all that can be had. *Wharton* v. *Wharton*, *P.* 1740. 2 *Atkyns* 294.]

[The Court will not allow a Defendant to amend an Answer, by striking out the Admission of a Fact which would deprive Plaintiff of the Benefit of this Evidence; especially, if he does not swear he was surprized into the Admission, or ill advised in setting it forth. *Pearce* v. *Grove*, *T.* 1747. 3 *Atkyns* 522.]

So after a Compromise of the Cause, the Bill and Answer may, by Consent, be ordered to be taken off the File. 1 *Ver.* 189.

(K. 3.) Answer by Commission.

The Defendant may take out a Commission, to take his Answer in the Country, of Course, without Motion, or *Affidavit*; *Vide* the Form, *West S.* 27. *Vide Practical Register in Chancery* 72.

And it was usual to inclose a Copy of the Bill in the Commission. *Vide Practical Register in Chancery* 72.

But now by the St. 4 & 5 *Ann.* 16. No Copy, Abstract, or Tenor of any Bill in Equity shall go with the *Dedimus*, or Commission for taking the Defendant's Answer; and in Lieu of it the sworn Clerks in all Causes shall take, to their own Use, the whole Term-Fee of 3*s.* 4*d.* and the whole Fee for all small Writs made by them.

But a Commission shall not be allowed, after an Attachment with Proclamation returned, without Motion upon an *Affidavit*, that the Defendant is sick, or other special Cause; or without the Assent of the Plaintiff. *Vide Practical Register in Chancery* 75, 6.

Nor after Time allowed for taking the Answer by reason of the Absence of Writings, *&c.*

Nor after an Answer formerly taken upon Commission. *Ord. per Cla.* *Vide Rules and Orders of Chancery* 99. *Vide Practical Register in Chancery* 77.

And by an Order in the *Exchequer*, a Defendant who answers by Commission shall

ſhall not demur, or give a dilatory Plea, without Order of Court upon Motion. *Rules and Orders in Exchequer* 4. *Rule* 7.

So, if the Defendant prays a Commiſſion, and does not take it out, until three Weeks before the next Term, (other than *Trinity* Term,) the Plaintiff may take out Proceſs of Contempt. *Rules and Orders in Exchequer* 4. *Rule* 6.

The Commiſſioners muſt adminiſter the Oath to the Defendant, and return the Commiſſion with the Anſwer ſigned by the Defendant, and the * Bill incloſed in the Commiſſion, thereunto annexed, and ſigned by the Commiſſioners in this Form, *Capt' apud C. in Com. E.* 2° *die M. &c. coram nobis, &c.*

* *Vide ſupra* 4 & 5 *Ann.* 16.

[A Commiſſion may go to take the Anſwer of a Heathen Idolator, in the *Eaſt-Indies*, and ſhall be to take the Oath in the moſt ſolemn Manner, according to the Commiſſioner's Diſcretion, and they ſhall certify the Manner. *Ramkiſſenſeat* v. *Baker, M.* 1739. 1 *Atkyns* 19.]

The Commiſſion ſo returned ſhall be delivered to a Maſter in *Chancery* by one of the Commiſſioners; or by ſome other Perſon, who ſhall take an Oath, that he received it from one of the Commiſſioners, and has not ſince opened it. *Vide Practical Regiſter in Chancery* 79. (which mentions the Delivery to be to the Six-Clerk, or his Deputy.)

If the Defendant puts in a Plea and Anſwer by Commiſſion, and the Commiſſioners return, that *Iſta Reſpons' Capt' fuit, &c.* it ſhall be rejected, but without Coſts; for it was the Fault of the Commiſſioners. 2 *Ca. Ch.* 208.

If the Commiſſion is only to take the Anſwer, the Commiſſioners cannot take a Plea or a Demurrer. 1 *Ver.* 275.

[If Time is given, or a Commiſſion, *to anſwer*, without any more, Defendant cannot demur, or plead and anſwer. *Philips* v. *Winter, in Sc.' P.* 1721. *Bunb.* 74.]

But if the Commiſſioners return an Anſwer annexed to the Commiſſion, and ſay, *Jurat' ſecundum Tenorem Commiſſionis annex'*, it will be well, tho' *Executio hujus Commiſſionis, &c.* be omitted. 1 *Ver.* 41.

After Anſwer, but not before, the Defendant may move that the Plaintiff may make his Election to proceed at Law, or in Equity; for he ought not to proceed in both. 1 *Ver.* 103.

But he may proceed at Law for the Recovery of the Land in Ejectment, and for an Account of the Profits in Equity. 1 *Ver.* 105.

(L) Exceptions.

(L 1) When delivered, &c.

IF the Anſwer is inſufficient, the Plaintiff may deliver Exceptions in Writing to the Counſel, who ſigned the Anſwer, or to the Defendant's Clerk. *Ord. per Cla. Rules and Orders of Chancery* 101. *Vide Practical Regiſter in Chancery* 171.

[Exceptions cannot be taken to an Infant's Anſwer, for he may amend it when he comes of age. *Gibſon* v. *Cole, in Canc. H.* 1733. *Strudwick* v. *Pargiter, T.* 1734. *in Sc. Bunb.* 338.]

[A *Feme Covert* ſhall not be obliged to anſwer to what might ſubject her to a Forfeiture, tho' ſhe has not demurred as ſhe ought to have done. *Wroteſley* v. *Bendiſh, H.* 1733. 3 *P. W.* 235.]

[If a Plea is ordered to ſtand for an Anſwer, without any Mention of Liberty to except, Plaintiff cannot except. *Sellon* v. *Lewin, H.* 1733. 3 *P. W.* 239.]

[If there is a Demurrer to Part, and anſwer to Part, Plaintiff cannot amend till the Demurrer is argued; nor will the Court diſcharge the Demurrer on Motion, tho' frivolous. *London Aſſurance* v. *Eaſt-India Company, T.* 1734. 3 *P. W.* 326.]

[But if Defendant anſwers as to Diſcovery, and pleads as to Relief only, Plaintiff may except to any Matter of Diſcovery before Plea argued, for it plainly is not covered by the Plea. 3 *P. W.* 326.]

[When Plea or Demurrer is over-ruled, if Defendant has alſo anſwered, he need not put in further Anſwer till after Exceptions, but if he only demurred, he muſt anſwer without Exceptions put in. *Cotes* v. *Turner, H.* 1722. *Bunb.* 123.

The Exceptions ſhall be delivered the Term, in which the Anſwer was filed, or within eight Days after that Term. *Ord. per Cla. Rules and Orders of Chancery* 101. *Vide Practical Regiſter in Chancery* 171.

And if the Anſwer was filed in the Vacation, within eight Days after the Beginning of the next Term. *Ibid.*

Or, upon Motion, the Court will give Time to deliver Exceptions afterwards. *Vide Practical Regiſter in Chancery* 171.

[If Anſwer comes in in *Michaelmas* Term, and Plaintiff does not take Exceptions within eight Days of *Hilary* Term, yet on applying to the Court, he is intitled of Courſe to except, provided he does it in two Terms, including the Term in which he moves; but if he neglects it then, the Court will not give Leave but on particular Circumſtances. *General Order, M.* 1743. 3 *Atkyns* 19. Nor to refer it for Impertinence. *Anon. T.* 1755. 2 *Vezey* 631.]

In the *Exchequer*, by Rule, the Exceptions ſhall be delivered within four Days of the Term next after the Anſwer, and ſhall be entred to be heard by the Court upon the *Saturday* ſeve'nnight following. *Rules and Orders of Exchequer* 6. *Rule* 14.

And an Anſwer in the Vacation, after ſetting down of Cauſes, ſhall be reputed an Anſwer of the Term enſuing. *Vide Rules and Orders in Exchequer* 7. *Rule* 14.

But in *Chancery*, if there is a Plea to Part, and an Anſwer to Part, the Plaintiff ſhall not take Exceptions to the Anſwer before the Plea is argued. 1 *Ver.* 344.

If the Defendant, within eight Days after the Delivery, ſatisfy the Plaintiff that the Exceptions are frivolous, he may waive them. *Vide Rules and Orders of Chancery* 101. *Vide Practical Regiſter in Chancery* 171.

Or, the Defendant within the ſame Time may amend his Anſwer, or agree that he will amend it, upon Payment of 20*s.* Coſts. *Ord. per Cla. Rules and Orders of Chancery* 101. *Vide Practical Regiſter in Chancery* 171.—In the *Exchequer*, the Defendant may amend two Days before the Day of Hearing, on Payment of 20*s.* Coſts. *Vide Rules and Orders in Exchequer* 6. *Rule* 14.

If the Plaintiff does not waive, nor the Defendant amend, the Plaintiff ſhall move the Court, that the Exceptions may be referred to a Maſter. *Vide Rules and Orders of Chancery* 101. *Vide Practical Regiſter in Chancery* 171.—In the *Exchequer*, they ſhall be ſet down to be heard by the Court, on the *Saturday* ſev'nnight. *Vide Rules and Orders in Exchequer* 6. *Rule* 14.

If the Exceptions are delivered in Vacation, the Defendant ſhall have Time to amend 'till the fourth Day in the next Term, unleſs he be haſtened by the Court.

If the Maſter reports the Anſwer good, the Plaintiff ſhall pay 40*s.* Coſts. *Ord. per Cla. Vide Rules and Orders of Chancery* 101. *Vide Practical Regiſter in Chancery* 171—So in the *Exchequer*, if the Court allows the Anſwer to be good. *Vide Rules and Orders in the Exchequer* 7. *Rule* 14.

If he reports it inſufficient, the Defendant ſhall pay 40*s.* Coſts, or, if the Anſwer was taken by Commiſſion, 50*s.* and ſhall make further Anſwer. *Ord. per Cla. Rules and Orders of Chancery* 102. *Vide Practical Regiſter in Chancery* 172.—In the *Exchequer*, if the Court adjudges the Anſwer inſufficient, the Defendant pays 3*l.* Coſts. *Vide Rules and Orders in Exchequer* 6. *Rule* 14.

And the Plaintiff ſhall have a *Subpœna* for the Coſts, and the other Anſwer ſhall not be received 'till the Coſts are paid. *Vide Practical Regiſter in Chancery* 172.—In the *Exchequer* the Defendant ſhall give another Anſwer in eight Days (unleſs he takes out a Commiſſion to take his Anſwer,) and ſhall rejoin *gratis*, and join in Commiſſion to examine Witneſſes. *Vide Rules and Orders in the Exchequer* 7. *Rule* 14.

[If Defendant anſwers the Exceptions fully, the Court will not give Leave to add or amend an Exception, but Plaintiff may amend his Bill by varying a Word or two, and have an Anſwer to it. *Wickens* v. *Pratt, H.* 1727. *Bunb.* 246.]

[When Exceptions are allowed, Plaintiff may of Courſe amend without Coſts, amending Defendant's Copy. *Chambers* v. *Robinſon. T.* 10 *G. Bunb.* 169.]

[If on Exceptions allowed Plaintiff has Leave to amend, and Defendant puts in further Anſwer before Amendment, Plaintiff may turn the whole Amendment into Exceptions to the ſecond Anſwer. *Coulſton* v. *Richardſon, T.* 10 *G. Bunb.* 168.]

If

If the Answer be reported insufficient, the Defendant shall answer to all the Points excepted to, tho' more than the Bill contained, unless he excepts to the Report. *Ca. Ch.* 60.

If the second Answer be reported insufficient in the Points excepted to, the Defendant shall pay 3*l.* Costs. *Ord. per Cla. Rules and Orders of Chancery* 102. *Vide Practical Register in Chancery* 172.

And the Plaintiff, upon Motion, shall stay all Process against him, for not answering to any cross Bill, until eight Days after the Defendant has made sufficient Answer.

And the Plaintiff shall proceed with his Process for Contempt against the Defendant, and need not begin with a *Subpœna de novo*. *Ca. Ch.* 238.—So, in the *Exchequer*. *Vide Rules and Orders in Exchequer* 7. *Rule* 16.

If, after an Answer is reported insufficient, and upon Exceptions is held bad by the Court, another Defendant gives the same Answer, it shall be disallowed. 1 *Ver.* 74.

In the *Exchequer*, if the second Answer be adjudged insufficient, the Defendant shall pay double Costs, *viz.* 6*l.* *Vide Rules and Orders in Exchequer* 7. *Rule* 15.

In *Chancery*, if the third Answer be reported insufficient, the Defendant shall pay 4*l.* for Costs. *Ord. per Cla. Rules and Orders of Chancery* 102. *Vide Practical Register in Chancery* 172.—In the *Exchequer* 9*l. viz.* treble Costs.

[If Exceptions are allowed to two Answers in *Scac.* and Plaintiff amends, and Defendant puts in an insufficient Answer to amended Bill, he shall pay 9*l.* Costs. as upon a third insufficient Answer. *Harman* v. *Immins*, *M.* 1725. *Bunb.* 203.]

If the fourth Answer, he shall pay 5*l.* and shall be examined upon Interrogatories, to the Points excepted to, and be committed until he makes a full Answer, and pays the Costs. *Ord. per Cla. Rules and Orders of Chancery* 102. *Vide Practical Register in Chancery* 172.—In the *Exchequer*, he shall pay such Costs as the Court shall think fit, and shall be committed, and examined upon Interrogatories. *Vide Rules and Orders in Exchequer* 7. *Rule* 15.

But, in *Chancery*, upon a Plea over-ruled, and three insufficient Answers, the Defendant shall not be committed to be examined upon Interrogatories. *Ca. Ch.* 279.

[The Court will not give Leave to add new Interrogatories for Examination of Defendant, on the Examination's being reported insufficient, and that both Sets may be answered at the same Time, without Notice of Motion be given to the other Party. *Anon. P.* 1747. 3 *Akyns* 511.]

When the Defendant is to be examined upon Interrogatories, his Counsel shall see them, before the Examination, but shall not have a Copy. *Per Cur'* upon Motion. *Ca. Ch.* 66.

And the Defendant shall have Counsel attending in the next Room, when he is examined, for his Advice in Point of Law, if needful. *Ord.* upon Motion, *Ca. Ch.* 66.

If the Master reports the Answer insufficient, when it is good, Exceptions may be taken to the Report. *Vide Post*, (W. 3.)

[If on Answer's being reported insufficient, Defendant does not except, but puts in second Answer, and that is also reported insufficient, Defendant may except to this Report, as it is has not undergone the Judgment of the Court. If it was a single Exception, Q. *Finch* v. *Finch*, *M.* 1752. 2 *Vezey* 491.]

(M.) Cause heard upon Bill and Answer.

IF the Answer be sufficient, the Plaintiff ought to be well advised, whether he can have a Decree, without other Proof. *Ord. per Cla. Rules and Orders of Chancery* 100.

If the Cause be heard upon Bill and Answer, the Answer shall be admitted true in all Points. *Ord. per Cla. Rules and Orders of Chancery* 100. *Vide Practical Register in Chancery* 216.

And no Evidence ſhall be admitted, but Matter of Record, to which the Anſwer refers, and which is proveable by the Record itſelf. *Ord. per Clo. Rules and Orders of Chancery* 100.

So, if the Plaintiff replies, but, without a Rejoinder or Rules for Publication, ſets down the Cauſe to be heard, the Anſwer ſhall be admitted to be true in all Points. 2 *Ca. Ch.* 21.

[If a Plaintiff of full Age does not reply to the Defendant's Anſwer, it is an Admiſſion of the Facts in the Anſwer, but if he is an Infant it does not affect him, for he can admit nothing. *Legard* v. *Sheffield*, *T.* 1742. 2 *Atkyns* 377.]

In the *Exchequer*, if the Plaintiff hears his Cauſe upon Bill and Anſwer, he ought to ſerve the Defendant with a *Subpœna ad audiendum Judicium*. Vide Rules and Orders in Exchequer 8. Rule 19.

In *Chancery*, if the Defendant by his Anſwer ſays, *he believes and doubts not to prove the Plaintiff paid*, if the Cauſe is heard upon Bill and Anſwer, the Plaintiff's Bill ſhall be diſmiſſed; for altho' the Defendant does not ſay poſitively, that he has paid the Plaintiff, yet the Plaintiff ought to reply, otherwiſe the Defendant is prevented of his Proof; and therefore the Plaintiff had Leave to reply upon Payment of Coſts. 1 *Ver.* 140.

If the Plaintiff proceeds, when he might have Relief upon Bill and Anſwer, tho' he afterwards obtains a Decree, yet he ſhall pay Coſts.

If, upon the Hearing, it appears that the Plaintiff is not ready for a Decree, upon the Matter diſcloſed in the Anſwer he ſhall have Liberty to reply, and proceed upon Payment of 5 *l.* Coſts. *Per Cur' P.* 2 *Ann. Vide Practical Regiſter in Chancery* 317.—So in the *Exchequer*, and he ſhall reply within eight Days, otherwiſe the Defendant ſhall be diſmiſſed with the ſaid 5 *l.* Coſts. *Rules and Orders in Exchequer* 8. *Rule* 19.

[If, the Anſwer not being ſufficient, an Iſſue at Law is directed, and Plaintiff nonſuited, the Bill ſhall be diſmiſſed with taxed Coſts. *Newſham* v. *Gray*, *P.* 1742. 2 *Atkyns* 286.]

[So on a Bill to redeem, referred to a Maſter to take an Account, and to appoint a Day, if the Mortgagor does not redeem on the Day. *Ibid.*]

[So on a Bill to be relieved againſt the Penalty of a Bond, if the Principal, &c. is not paid on the Day. *Ibid.*]

[If the Plaintiff replies, and then moves to withdraw Replication and amend Bill, then ſets down on Bill and Anſwer, he ſhall on Diſmiſſion pay taxed Coſts. *Semb. ſed Q. Ibid.*]

[By a general Order, 27th *April* 1748, Coſts on Cauſes heard on Bill and Anſwer are to be at the Diſcretion of the Court.]

(N) Replication.

AFTER a full Anſwer made, the Defendant in the next Term may give a Rule for the Plaintiff to reply; and if he does not reply in the ſame Term, his Bill ſhall be diſmiſſed with Coſts. *Vide Practical Regiſter in Chancery* 318.

The Plaintiff upon the Diſmiſſion, ſhall pay full Coſts. 1 *Ver.* 334.

Or, after Anſwer, the Plaintiff himſelf may move to have his own Bill diſmiſſed. *Vide Practical Regiſter in Chancery* 144.—In the *Exchequer* it ſhall be diſmiſſed with 40*s.* Coſts, unleſs the Court increaſes them. *Vide Rules and Orders in Exchequer* 8. *Rule* 17.

If no Rule be given, or Motion made for the Diſmiſſion, the Plaintiff ſhall make a Replication before the End of the third Term incluſive, otherwiſe his Bill will be diſmiſſed with Coſts. *Vide Practical Regiſter in Chancery* 318.

In the *Exchequer*, if the Plaintiff does not reply the next Term after Anſwer, the Defendant may give a Rule to reply within a Week in the ſubſequent Term; and if he does not then reply, the Bill ſhall be diſmiſſed with 5 Marks Coſts. *Rules and Orders in Exchequer* 8. *Rule* 20.

If there be not a Week in Term, the Plaintiff ſhall have a Day, to ſhew Cauſe, at the ſetting down of Cauſes. *Rules and Orders in Exchequer* 9. *Rule* 20.

If

If the Defendant gives a Rule, he ought to rejoin *gratis* and join in Commiſſion; and if the Plaintiff does not take out a Commiſſion in the next Term, the Defendant may take it out *ex parte*, or diſmiſs the Bill with 5 *l.* Coſts. *Rules and Orders in Exchequer* 9. *Rule* 20.

In *Chancery*, the Replication ſhall be general, or ſpecial. *Vide Practical Regiſter in Chancery* 315.

Shall be ſuccinct, and not ſcandalous. *Vide Practical Regiſter in Chancery* 316.

Muſt maintain the Bill, and confeſs, avoid, deny, or traverſe the Anſwer. *Vide Practical Regiſter in Chancery* 315.

Shall not contain Matter, which does not tend to avoid the Anſwer. *Vide Practical Regiſter in Chancery* 316.

Nor proceed to Proof, in Matters confeſſed by the Anſwer, but in other Things only. *Vide Rules and Orders of Chancery* 100. *Vide Practical Regiſter in Chancery* 316.

[On a general Demand for Tithes, and a general Replication, if Plaintiff on the Commiſſion gives Notice that he will examine only as to ſuch Matters, it is as well as if the Demand had been abridged in the Replication. *Anon. in Sc. H.* 1717. *Bunb.* 22. *(Sed. Q.)*]

[If Defendant diſclaims generally, Plaintiff ought not to reply, if he does, and ſerves *Subpœna* to rejoin, he ſhall pay Coſts. *Williams* v. *Longfellow. M.* 1747. 3 *Atkyns* 582.]

If a Special Replication be given, the Defendant may plead, or demur to it. 1 *Ver.* 351.

But if the Plea and Demurrer are allowed, the Plaintiff may afterwards put in a General Replication. *Dub.* 1 *Ver.* 351.

If, after a Bill and a ſpecial Replication, the Defendant recovers by a Verdict at Law, he may plead it in ſuch a Manner as to prevent an Examination into the Matter ſettled by the Trial. 1 *Ver.* 351.

[The Court will not give leave to withdraw Replication, unleſs it be added, that Plaintiff may thereby be enabled to amend his Bill, or ſome other Reaſon to induce the Court: or Q. if he conſents to pay full Coſts if his Bill is diſmiſſed at the Hearing. *Pott* v. *Reynolds*, *T.* 1747. 3 *Atkyns* 565.]

(O) Rejoinder, &c.

AFTER Replication, the Defendant may rejoin *gratis*, and compel the Plaintiff to join in Commiſſion. *Vide Practical Regiſter in Chancery* 314.

If he does not do it, the Plaintiff may ſerve him with a *Subpœna* to rejoin.

The Plaintiff ſhall not have a *Subpœna* to rejoin, unleſs the Replication be filed before the Return of it; for if the Defendant does not find the Replication filed, he ſhall have the ordinary Coſts. *Ord. per Cla. Rules and Orders of Chancery* 102.

[If Plaintiff produces Order for *Subpœna* to rejoin, and Affidavit that ſome of the Parties are out of the Kingdom, the Court will not diſmiſs Bill for want of Proſecution. *General Order*, *T.* 1743. 2 *Atkyns* 604.]

[If for want of producing ſuch Order and Affidavit the Bill has been diſmiſſed, yet on producing them afterwards, and paying Coſts out of Purſe, the Court will retain it; but the Order muſt be dated before the Notice to diſmiſs. *Ibid.*]

After the Return of this *Subpœna*, and an *Affidavit* of the Service, the Plaintiff ſhall give a Rule, that the Defendant ſhall rejoin within ſeven Days; and if he does not, he cannot do it afterwards.

If the Defendant does not rejoin, or if he does rejoin, but at the Requeſt of the Plaintiff's Clerk does not give the Names of Commiſſioners before the End of the ſame Term, the Plaintiff without Motion, or Petition, ſhall take out a Commiſſion *ex parte*. *Vide Practical Regiſter in Chancery* 314.

By Order in the *Exchequer*, if the Defendant makes Anſwer by Commiſſion, he ought to rejoin *gratis*, and join in Commiſſion to examine Witneſſes; otherwiſe the Plaintiff ſhall take out a Commiſſion *ex parte*, within a Week after the End of the Term. *Rules and Orders in Exchequer* 3, 4. *Rule* 6.

So, where the Defendant is not bound to rejoin *gratis*, if he does not rejoin upon Service of a *Subpœna*. *Vide Rules and Orders in Exchequer* 9. *Rule* 21.

The

The Rejoinder shall maintain the Answer, and traverse, or confess and avoid the Replication. *Vide Practical Register in Chancery* 312.

The Plaintiff, if necessary, may further join, and the Defendant rebut to it. *Vide Practical Register in Chancery* 314.

(P) Examination of Witnesses.

(P. 1.) By the Examiner.

WHEN the Parties are at Issue, they shall proceed to the Examination of Witnesses. *Vide Rules and Orders of Chancery* 103.

But no Examination can be, before Answer. *Vide Practical Register in Chancery* 161.

Each Party may examine his Witnesses before an Examiner of the Court, if he pleases. *Ibid.*

And ought to examine them before him, if they live within ten Miles of *London*, unless a Commission be allowed for special Cause upon Motion and *Affidavit*. Ord. per Cla. Vide Rules and Orders of Chancery 109.

And all Depositions taken by Commission, without special Order, within *London* or ten Miles of it, shall be superseded *ipso facto*, and not be admitted as Evidence at the Hearing of the Cause, and he who procured them, shall be punished. *Ord. per Cla. Rules and Orders of Chancery* 109. *Vide Practical Register in Chancery* 85.

The Witnesses shall be examined by the Examiner himself, and not by his Clerks. *Ord. per Cla. Rules and Orders of Chancery* 105, *Vide Practical Register in Chancery* 159.

And shall be shewn to the adverse Party, or his Clerk, before they are produced to the Examiner. *Ord. Per Cla. Rules and Orders of Chancery* 103. *Vide Practical Register in Chancery* 163.

And after Answer, but before the Rule for passing Publication is served, a Note in Writing of the Name, Title, and Dwelling of the Witnesses examined shall be delivered to the adverse Party, or his Clerk; and the Examiner ought to see that such Notice is given. *Ibid.*

The Examiner shall not discover any Interrogatory, before Publication. *Vide Practical Register in Chancery* 158.

And shall have no Person in his Office, who does not take an Oath, that he will not directly or indirectly discover, or give a Copy of any Interrogatory delivered to him, or in his Office, before Publication. *Ord. per Cla. Rules and Orders of Chancery* 106. *Vide Practical Register in Chancery* 159.

(P. 2.) By Commission.

If the Witnesses live above ten Miles out of *London*, or within, upon special Cause, the Parties may take out a Commission to examine them. *Vide Rules and Orders of Chancery* 109. *Vide Practical Register in Chancery* 85.

If the Parties join in Commission, one of them shall give the Names of four Commissioners, and the other of four others; and two of each Side shall be refused by the other Party. *Vide Practical Register in Chancery* 84.

If the Defendant submits to answer upon Interrogatories, or for a Contempt, which ought to be, by Rule, within four Days, or shall stand committed, yet if he be in the Country, a Commission shall be allowed him. 1 *Ver.* 187.

The Commissioners shall not be of Kin to either Party. *Vide Practical Register in Chancery* 84.

Nor Master, Lessor, or Partner. *Ibid.*

Nor Counsel, Attorney, or Solicitor in the Cause. *Ibid.*

[If a Commissioner is Plaintiff's Solicitor, the Depositions shall be suppressed, and the Solicitor pay all Costs. *Fricker* v. *Moore, M.* 1730. *Bunb.* 289.]

Nor a Creditor, or concerned in a Suit with either Party. *Vide Practical Register in Chancery* 84.

And by Order 9th *Feb.* 8 *Geo.* Commiſſioners and their Clerks ſhall be ſworn o act impartially, and not diſcloſe the Contents of the Depoſitions 'till Publiation. *Vide Rules and Orders of Chancery* 207, 8, 9.

But they may take a Reward; and an *Aſſumpſit* lies for Non-payment; for hey are named by the Party. *R.* 1 *Sal.* 330.

The Plaintiff, in the firſt Place, ſhall have the Carriage of the Commiſſion. *Vide Practical Regiſter in Chancery* 83.

And he who has it, ſhall give 14 Days Notice to the other Side, in Perſon or y Note in Writing, of the Time and Place of the Execution. *Vide Practical Regiſter in Chancery* 86.

[If there are four Commiſſioners of a Side, Plaintiff may give Notice of Execuion to any two of Defendant's Commiſſioners. *Anon. P.* 1748. 3 *Atkyns* 633.]

But if by the Default of him or his Commiſſioners, it be not executed at the aid Time and Place, he ſhall pay all Coſts, which appear to have been expended y the other Side upon *Affidavit*, in Fees Entertainment of the Commiſſioners, Witeſſes, *&c.* ſhall take out another Commiſſion at his own Charge, and ſuffer the ther Side to have the Carriage of it. *Ord. per Cla. Vide Rules and Orders of Chancery* 108. *Vide Practical Regiſter in Chancery* 86, 88.—So in the *Exchequer*. *Vide Rules and Orders in Exchequer* 9. *Rule* 22.

Otherwiſe, if by the Default of the Clerk; for then it ſhall be renewed at the qual Charge, or at the Charge of him, who procured the Non-Execution. *Vide Practical Regiſter in Chancery* 88.

In the *Exchequer* upon a Commiſſion renewed, the other Party may join and roſs-examine the Witneſſes if he pleaſes. *Rules and Orders in Exchequer* 9. *Rule* 22.

But if he examines his own Witneſſes, he ſhall pay half the Charge.. *Rules nd Orders in Exchequer* 10. *Rule* 22.

So the other Party may have a Duplicate of the Commiſſion, and if he who akes out the Commiſſion does not give eight Days Notice of the Execution, beore the Return, the other may execute the Duplicate upon four Day's Notice, nd no ſecond Commiſſion ſhall be awarded without Motion. *Ibid.*

If, after an Order that Notice be given to one Defendant, Notice be given to nother, who has but a ſmall Intereſt in the Cauſe; another Commiſſion ſhall be warded, and carried by that Defendant to whom the Notice ought to have been iven.

If a Commiſſion be renewed upon the Default of the Defendant, or his Comiſſioners, or becauſe he has not examined all his Witneſſes, he ſhall examine all is Witneſſes before the Return of that Commiſſion, either upon the Comiſſion, or in Court, at his Peril; and no other Commiſſion ſhall iſſue, but for he Examination of Witneſſes beyond Sea, or by Order of the Court. *Rules and rders in Exchequer* 10. *Rule* 23.

In *Chancery*, no Commiſſion ſhall be granted after Publication, without Order. *ide Practical Regiſter in Chancery* 89.

So in the *Exchequer* there ſhall be no Commiſſion for the Examination of Witneſſes in *London* or within ten Miles of *London*, without Order upon an *Affiavit*, that the Witneſſes are unable to come, or other Cauſe. *Rules and Orders Exchequer* 10. *Rule* 24.

And if ſuch Commiſſion be without Order, it ſhall be ſuppreſſed *ipſo facto*, nd the Depoſitions thereupon ſhall not be read at the Hearing of the Cauſe. *Ibid.*

[The Exchequer may iſſue a Commiſſion to examine Witneſſes abroad to ake uſe of the Depoſitions at the Trial of the Cauſe. *Jenkins* v. *Larwood*, . 1717. *in Sc' B.*]

[The Court will not grant a Commiſſion to examine, to be made uſe of in rial at Law, before Iſſue is joined here. *Lowther* v. *Whorwood*, *M.* 1722. *unb.* 120.]

In *Chancery*, if the Commiſſioners have Authority by their Commiſſion, they ught to ſummon the Witneſſes before them. *Vide Practical Regiſter in Chanry* 89.

If they have not Authority, the Witneſſes ought to be ſerved with a *Subpœna d Teſtificand.* Ibid.

The Commiſſioners ought to demean themſelves well in the Examination of the Witneſſes; for upon an *Affidavit* of Miſbehaviour, an Attachment lies againſt them.

If they are obſtructed, they ought to certify the Obſtruction. *Vide Practical Regiſter in Chancery* 92.

If they cannot agree, an Examiner ſhall be ſent to them. *Vide Practical Regiſter in Chancery* 93.

If the Commiſſion be obtained by a *Feme Sole*, who marries before the Execution, yet they may proceed.

The Commiſſioners may adjourn to another Place, or Time, if the Witneſſes are infirm, *&c. Ca. Ch.* 282.

After Examination of the Witneſſes, the Commiſſioners ought to annex the Depoſitions with the Interrogatories to the Commiſſion, and return it. *Vide Practical Regiſter in Chancery* 92.

And the Commiſſion executed ſhall be delivered to a Maſter of the Court by a Commiſſioner himſelf. *Ibid.*

Or by one, who ſhall make Oath, that he received it from one of the Commiſſioners, and does not know of any Alteration. *Vide Practical Regiſter in Chancery* 92, 79.

A Commiſſion ſhall not be quaſhed upon Petition, but only after a Reference and Certificate. *Vide Practical Regiſter in Chancery* 86.

A Commiſſion in the *Exchequer* ought to be executed the next Vacation where the Plaintiff replies after the Cauſe is ſet down upon Bill and Anſwer. *Vide Rules and Orders in Exchequer* 8. *Rule* 19.

[If a Commiſſion in *England* is taken out in the Vacation, returnable *without delay*, it does not expire the firſt Day of next Term, but may be continued in Execution to the laſt Day of it. *Barnſley* v. *Powell, M.* 1747. 3 *Atkyns* 593.]

(P. 3.) Commiſſion *ex parte*.

If the Defendant does not join, or refuſes to name Commiſſioners, the Plaintiff may have a Commiſſion *ex parte*, and ſhall name ſix Commiſſioners, two of whom ſhall be left out by the Court. *Vide Practical Regiſter in Chancery* 85.

Or, if he who carries the Commiſſion, does not give ſufficient Notice of the Execution, the other may have a Commiſſion *ex parte*.

Or, if the Plaintiff refuſes to join the Defendant may have a Commiſſion *ex parte*. *Vide Practical Regiſter in Chancery* 82, 83.

Or, if the Plaintiff examines his Witneſſes before an Examiner of the Court.

He who takes out a Commiſſion *ex parte*, need not give Notice to the other of the Execution. *Vide Practical Regiſter in Chancery* 85.

So, in the *Exchequer*, if there be a Commiſſion in an Information, in the Nature of an Inquiſition, to intitle the King, it ſhall be taken out *ex parte*, and the Defendant ſhall not join in Commiſſion. *Sav.* 4.

Otherwiſe, where the Commiſſion is after Plea and Iſſue joined, for then the Defendant ſhall join; becauſe then it is to prove the Title of the King. *Sav.* 4.

(P. 4.) New Commiſſion.

If the Defendant ſerves his Witneſſes, and they do not appear, he ſhall have a new Commiſſion by Conſent, or by Order of Court. *Vide Practical Regiſter in Chancery* 90.

But if he does not examine any Witneſs nor puts in his Interrogatories, he ſhall not have it, without Order upon Motion, and *Affidavit*, and Coſts paid. *Vide Practical Regiſter in Chancery* 88.

And he ſhall bear all the Charge of it in Court and in the Country; except where the other alſo examines more Witneſſes; for then it ſhall be at equal Charge

Charge. *Ord. per Cla. Vide Rules and Orders in Chancery* 108. *Vide Practical Regiſter in Chancery* 87, 88.

And he ſhall bear the Charge, tho' the other Side croſs-examines his Witneſſes. *Ord. per Cla. Vide Rules and Orders of Chancery* 108. *Vide Practical Regiſter in Chancery* 87, 8.

And the Charge ſhall be aſcertained, by the *Affidavit* of him who expended . *Ord. per Cla. Vide Rules and Orders of Chancery* 108. *Vide Practical Regiſter in Chancery* 88.

If he examines a Witneſs, he ſhall not have a new Commiſſion to reexamine him though the Witneſs makes *Affidavit* that he was ſurprized. *Ca. Ch.* 25.

But in ſuch Caſe, he may have an Order, that the Witneſs be examined, upon the Hearing of the Cauſe.

So, if any Party does not examine all his Witneſſes, there may be a new Commiſſion.

Or, if the firſt Commiſſion be quaſhed.

Or, if by the Default of him who had the Commiſſion, or of his Commiſſioners it was not executed. *Vide Rules and Orders of Chancery* 109.

He, who has a new Commiſſion muſt examine all his Witneſſes upon it before the Return. *Ord. per Cla. Vide Rules and Orders of Chancery* 109.

Or before the End of the Term, in which it is returnable in Court. *Ord. per Cla. Vide Rules and Orders of Chancery* 109.

But he may examine them after the Return, upon a ſpecial Order.

As to New Commiſſion in the Exchequer. *Vide Ante*, (P. 2.)

(P. 5.) Interrogatories.

Interrogatories ought to be prepared before the Examination of the Witneſſes. *Vide Practical Regiſter in Chancery* 220.

Which being engroſſed ſhall be delivered to the Examiner. *Vide Practical Regiſter in Chancery* 220.

And ſhall be ſent with the Commiſſion to the Commiſſioners. *Vide Practical Regiſter in Chancery* 220.

And one Party ſhall not know the Contents of the Interrogatories of the other.

In the *Exchequer*, after Interrogatories exhibited by either Party, there ſhall be no Addition, or Alteration, without Leave of the Court. *Rules and Orders in Exchequer* 11. *Rule* 24.

Interrogatories in *Chancery* muſt be ſhort, material, and apt. *Vide Rules and Orders of Chancery* 103. *Vide Practical Regiſter in Chancery* 220.

And only to Points neceſſary. *Ord per Cla. Vide Rules and Orders of Chancery* 103. *Vide Practical Regiſter in Chancery* 220.

And by Order 29*th April* 3 *Jac.* 2. they ſhall be peruſed and ſigned by Counſel or otherwiſe, ſuppreſſed. *Vide Rules and Orders of Chancery*, 173. *Vide Practical Regiſter in Chancery* 220.

But a Witneſs cannot demur to an Interrogatory, if it be not material. 1 *Ver.* 365.

When the Witneſſes are examined in Court upon a Schedule of Interrogatories, no other Interrogatories can afterwards be added for the ſame Witneſſes. *Ord. per Cla. Rules and Orders of Chancery* 103. *Vide Practical Regiſter in Chancery* 221.

So when the Party hath had a Commiſſioner preſent upon the firſt Examination, he ſhall not examine upon new Interrogatories, by another Commiſſion, as to the Merits of the Cauſe. *Ca. Ch.* 274.

But as to an Alteration of Exhibits made at the firſt Examination, he may. *Ibid.*

So if Witneſſes are examined by the Examiner, each Party may afterwards exhibit one or more Interrogatories, or a new Set of Interrogatories, for the Ex-

amination of the ſame or other Witneſſes, by reaſon of the Credit of the Examiner, who is a ſworn Officer. *Pr. Cha.* 386.

(P. 6.) The Manner of Examination.

[The ſpiritual Court may be obliged to deliver out a Will of Land, on Security. *Morſe* v. *Roach*, *H.* 7 *G.* 2. *Str.* 961.]

[If all the Deviſees conſent, but otherwiſe not, the Court will order the Will to be delivered (on ſecurity) to be carried abroad, to be proved under a Commiſſion by a Witneſs always reſiding there. *Frederick* v. *Aynſcombe*, *M.* 1738. 1 *Atkyns* 627.]

[Lord *Macclesfield* ordered a Will to be delivered by the Prerogative Office to the Regiſter Office in *Symond's Inn*, there to lie till the Court of Chancery had done with it. *Ibid.*]

The Examiner or the Commiſſioners, ought to examine the Witneſſes to the Interrogatories *ſeriatim*. *Ord. per Cla. Rules and Orders of Chaucery* 105. *Vide Practical Regiſter in Chancery* 90, 164.

And not permit them to read, or hear, more Interrogatories, before they have anſwered the firſt. *Ibid*,

Nor permit them to depart before their Anſwer is finiſhed to any Interrogatory. *Ibid.*

Nor permit them to write their Depoſitions, upon ſeeing all the Interrogatories. *Ibid.*

And if a Witneſs will not conform, they ſhall not proceed further in the Examination, without Notice given to the other Party, and his Conſent, or an Order of Court. *Ord. per Cla. Vide Rules and Orders of Chancery* 105. *Vide Practical Regiſter in Chancery* 165.

They ought to hold the Witneſs to the Queſtion interrogated, without writing vain Repetitions, or impertinent Circumſtances. *Ord. per Cla. Rules and Orders of Chancery* 105. *Vide Practical Regiſter in Chancery* 90, 159.

To an Interrogatory, of which the Witneſs does not know any Thing, the Examiner ſhall write nothing but, *To this Interrogatory this Examinant doth not depoſe*; and if he does for the Lengthening of the Depoſitions, he ſhall recompence the Party grieved as the Court ſhall aſſeſs. *Ord. per Cla. Rules and Orders of Chancery* 106. *Vide Practical Regiſter in Chancery* 165.

If a Commiſſioner to take Examinations be a Witneſs, he ought to be examined, before he has heard any other Examination. 2 *Ca. Ch.* 79. *Vide Practical Regiſter in Chancery* 91.

If an Examination be irregular, the Depoſition ſhall be ſuppreſſed; as if a Witneſs be three times examined to the ſame Matter. 2 *Ca. Ch.* 79.—Tho' he ſpoke uncertainly at the firſt. 2 *Ca. Ch.* 217.

So, if a Commiſſioner, *&c.* be examined in Court, or elſewhere, after hearing the other Examinations. 2 *Ca. Ch.* 79.

(P. 7.) What Witneſſes ſhall be examined.

The Party himſelf, or his Wife, his Counſel, Attorney, or Solicitor ſhall not be examined, unleſs upon ſpecial Cauſe. *Vide Practical Regiſter in Chancery* 360, 361, 364, 365.

[Tho' an Attorney or Counſel may demur to being examined, yet he may conſent, and the Court will hear his Depoſition. *Maddox* v. *Maddox*, *M.* 1747. 1 *Vezey* 61.]

[Where a Party examines his own Attorney or Clerk in Court, the other Side may croſs-examine him relative to the ſame Matter, but not as to other Points. *Vaillant*, v. *Dodemead*, *H.* 1742. 2 *Atkyns* 524.]

[A Clerk in Court or Solicitor may be examined, touching Tranſactions antecedent to the Commencement of the Suit, and the Knowledge whereof could not come to him as ſuch. *Ibid.*]

[No

[No Perſon is privileged from being examined, except of the Profeſſion, as Counſel, Attorney, or Solicitor; not an Agent, for he may be only a Steward or Servant. *Ibid.*]

[A Clerk in Court may be examined to prove a Deed, for a Conveyancer may be examined. *Ibid.*]

[A Demurrer by a Witneſs, for that he knows nothing but what came to his Knowledge as Clerk in Court, or *Agent* for Defendant in relation to the Matters in Queſtion in the Cauſe, is not good; for it ought to conclude, that he knew nothing but by the Information of his Client. *Ibid.*]

Nor a Guardian againſt an Infant. *Vide Practical Regiſter in Chancery* 361.

Nor a Plaintiff for another Plaintiff, tho' he be but a Truſtee; but the Bill ſhall firſt be diſmiſſed as to him. 1 *Ver.* 230.

And if an Order be obtained by Surprize for the Examination of any ſuch, it ſhall be diſallowed. 2 *Ca. Ch.* 80.

If a Witneſs demurs to an Interrogatory, becauſe he has an Intereſt, he ought to ſwear, what Intereſt. 2 *Ca. Ch.* 208.

[The Owner of Lands in a Pariſh, in the Hands of a Tenant, may be a Witneſs in a Suit for Tithes in that Pariſh. *Ayde* v. *Flower*, *T.* 1716. *in Sc. Bumb.* 7.]

[Inhabitant of a Pariſh where a *Modus* is inſiſted on, is *prima facie*, a bad Witneſs, if he occupies no titheable Land, he muſt ſhew it. *Watſon* v. *Lindſel*, *in Sc. P.* 1719. *Bunb.* 40.]

A Witneſs ſhall not be examined to impeach the Teſtimony of another Witneſs, without a ſpecial Order of Court, which is not frequently granted. *Ord. per Cla. Vide Rules and Orders of Chancery* 105. *Vide Practical Regiſter in Chancery* 165.

And then Exceptions to the Witneſs impeached ſhall be filed with the Examiner *gratis*, and Notice, with a Copy of the Exceptions, delivered *gratis* to the adverſe Party, or his Clerk. *Ord. per Cla. Rules and Orders of Chancery* 105. *Vide Practical Regiſter in Chancery* 165.

[There may be an Order to examine to the Credit of a Witneſs even before Publication. *Bonning* v. *Sprott*, *in Sc. T.* 1719. *Bunb.* 46.]

[Articles may be exhibited to examine to the Credit of a Witneſs, but they ſhould be ſupported by Affidavit. *Et per Hardwicke* C. tho' at Law you can examine only to the general Credit, yet in Equity it is otherwiſe, and you may examine to a particular Charge. *Sed Q.* *Gill* v. *Watſon*, *T.* 1747. 3 *Atkyns* 522.]

[After Publication, the Court will not allow Articles to be exhibited againſt the Competency of a Witneſs. *Callaghan* v. *Rochfort*, *P.* 1748. 3 *Atkyns* 643.]

[But if the Objection to Competency comes to the Knowledge of the Party after Examination, the Court will allow an Examination to it after Publication, on Motion. *Ibid.*]

[After Publication, the Court will grant Commiſſion to examine in Support of Articles againſt the Credit of a Witneſs; but if it is abroad or in *Ireland*, there muſt be an Affidavit that no Perſon in *England* can ſwear as to the Witneſſes Credit. *Ibid.*]

[After the Cauſe ſet down, the Court will ſometimes give Leave to exhibit Interrogatories to the Credit of a Witneſs, to prove Exhibits, and croſs-examine Witneſſes already examined. *Barnſley* v. *Powell*, *M.* 1747. 3 *Atkyns* 593.]

[After the Cauſe in Paper, the Court will not give Leave to exhibit Interrogatories, and a Commiſſion to examine to the Credit of a Witneſs. *Gill* v. *Watſon*, *T.* 1747. 3 *Atkyns* 522.]

If a Defendant has no Intereſt, or diſclaims, or is only a Truſtee, by Order he may be examined as a Witneſs. 2 *Ca. Ch.* 214.

[An Adminiſtrator *durante minore ætate*, after Adminiſtration determined, is in general a competent Witneſs; but if by his Anſwer he has ſubmitted to pay, and ſo made himſelf liable, he is not competent. *Fotherby* v. *Pate*, *H.* 1747. 3 *Atkyns* 603.]

So, a Commiſſioner himſelf, if he is examined before any other Witneſs. 1 *Ver.* 369.

So, a Defendant being only a Truſtee, if he diſclaims all Intereſt. 1 *Vern.* 230.

A Witneſs upon Deliberation may amend his Depoſition. *Vide Practical Regiſter in Chancery* 90, 91.

[Witneſs examined on the firſt Commiſſion, cannot be examined on the ſecond without Leave. *Per Price B. Dudle v. Billings, in Sc. T.* 1718. *Bunb.* 24.]

No Witneſs need ſubmit to an Examination 'till his Expences are diſcharged. And if he is ſick, the Commiſſioners ought to go to his Habitation.

(P. 8.) Depoſitions.

The Depoſitions ought to be written in one or more Rolls of Parchment, each of them to be ſubſcribed by the Commiſſioners. *Vide Practical Regiſter in Chancery* 92.

And the Examiner ſhall enter the Name of the Witneſs, his Age, and Dwelling, and the Name of him who gave Notice of the Name, and Dwelling of the Witneſs, and to whom ſuch Notice was given, and the Time when. *Ord. per Cla. Vide Rules and Orders of Chancery* 103. *Vide Practical Regiſter in Chancery* 163.

If the Clerk deliver an Abſtract of a Depoſition, or Interrogatory, to any one before Publication, he ſhall be expelled the Office; and if his Clerk does ſo, the Examiner ſhall anſwer to the Court for the Miſdemeanor, and to the Party for Coſts and Damages, and every Perſon concerned ſhall be puniſhed as the Court ſhall think proper. *Ord. per Cla. Rules and Orders of Chancery* 106. *Vide Practical Regiſter in Chancery* 159, 160.

Depoſitions obtained by male Practice ſhall be ſuppreſſed, by Order of the Court. *Vide Practical Regiſter in Chancery* 137.

So, if they are falſely written; and the Witneſſes ſhall be examined *de novo*. *Vide Practical Regiſter in Chancery* 138.

So, If the ſame Witneſs be examined three Times to the ſame Thing. 2 *Ca. Ch.* 79.

But they ſhall not be ſuppreſſed upon a Petition, nor upon Motion, without a Certificate of a Six-Clerk; for a Rule ſhall be entred with the Regiſter of Courſe, to attend a Six-Clerk not concerned in the Cauſe; and if the Attornies do not agree before him, he ſhall certify the Fact, with his Opinion, to the Court. *Ord. per Cla. Rules and Orders of Chancery* 110. *Vide Practical Regiſter in Chancery* 138.

[If Witneſſes are examined on a Commiſſion abroad, after the Death of Plaintiff, neither Commiſſioners nor Witneſſes knowing it, the Depoſitions ſhall not be ſuppreſſed. *Thompſon's Caſe, T.* 1733. *P.W.* 195.]

[Depoſitions and Interrogatories may be referred for Scandal and Impertinence, and if found ſo, the Court will order it to be expunged. *Cocks v. Worthington, M.* 1741. 2 *Atkyns* 235 & 236.]

[But whether for Impertinence alone, *dub. Pyncent v. Pyncent, T.* 1747. 3 *Atkyns* 557.

(Q.) Publication.

AFTER the Plaintiff and Defendant have examined all their Witneſſes, if the Examination was by an Examiner, two Rules are given by each of them, to ſhew Cauſe, why Publication ſhould not paſs. *Ord. per. Cla. Rules and Orders of Chancery* 107. *Vide Practical Regiſter in Chancery* 297.

If the Examination was by Commiſſion, one Rule is ſufficient. *Ord. per Cla. Rules and Orders of Chancery* 107. *Vide Practical Regiſter in Chancery* 297.

And the Time contained in the Rule ſhall be a Week. *Vide Practical Regiſter in Chancery* 297.—A Week after the Return of the Commiſſion, or Examination, in the *Exchequer*. *Rules and Orders in Exchequer* 11. *Rule* 25.

If no Cauſe be ſhewn to the contrary, nor a new Commiſſion granted, Publication ſhall be allowed. *Ord. per Cla. Vide Rules and Orders of Chancery* 107. *Vide Practical Regiſter in Chancery* 297.

[If a Croſs-bill is filed before Anſwer put in to the original Bill, the Court will ſtay Proceedings till the Anſwer is put into the Croſs-bill; if it is filed after Anſwer,

Anſwer, the Court will only ſtay Publication. *Rawkiſſenſeat* v. *Barker*, *M.* 1739. 3 *Atkyns* 19.]

[The Court in ſuch Caſe will enlarge Publication in the original Cauſe to a Fortnight after the Anſwer to the Croſs-bill is come in. *Creſwick* v. *Creſwick*, *M.* 1738. 1 *Atkyns* 291.]

[If original Bill has been proceeded in, Publication on the Croſs-bill ſhall not be enlarged but on ſpecial Motion. *Aylet* v. *Eaſy*, *T.* 1751. 2 *Vezey* 336.

[After Publication paſſed, and Depoſitions delivered to be copied, Publication can never be enlarged (in the Exchequer.) *Orlebar* v. *Snead*, *M.* 1733. *Bunb.* 330.

[The Exhibits proved in a Cauſe cannot be inſpected before Hearing. *Davers* v. *Davers*, *P.* 13 *G. Str.* 764.]

In the *Exchequer*, if there be not a Week in Term when the Rule is given, there ſhall be a Day to ſhew Cauſe at the Sittings. *Rules and Orders in Exchequer* 11. *Rule* 25.

In *Chancery*, after Publication allowed, more Witneſſes ſhall not be examined, without Order of Court, upon an *Affidavit*, that the Party is not privy to the Examination of any other Witneſs before examined, and of a ſufficient Cauſe why ſuch Witneſs could not have been examined before. *Vide Practical Regiſter in Chancery* 161, 2.

Or, that ſuch ſufficient Cauſe be certified, by the Commiſſioners. *Vide Practical Regiſter in Chancery* 162.

And there ſhall be a Proviſo in the Order that the Party ſhall not ſee the former Examination in the mean Time. *Vide Practical Regiſter in Chancery* 162.

[The Court will ſometimes grant a new Commiſſion after Publication is paſſed, and the Cauſe ſet down, if the former Commiſſion was cloſed long before its Expiration, and without the Knowledge of one of the Parties. *Barnſly* v. *Powell*, *M.* 1747. 3 *Atkyns* 593.]

After Publication, a new Witneſs ſhall not be examined though he was ſworn before. *Vide Rules and Orders of Chancery* 104. *Vide Practical Regiſter in Chancery* 164.

But an Examination after Publication, is in the Diſcretion of the Court, who ordered it after Publication, and Hearing of the Cauſe and a Trial at Law directed, where the Witneſs was of the Age of eighty Years, and could not come to the Trial, and a Freehold given to charitable Uſes, which is not properly triable at Law, was concerned. *Ca. Ch.* 229.

And if the Court allows an Examination after Publication, upon the uſual *Affidavit*, the other Party may examine other Witneſſes, and alſo croſs-examine thoſe produced by the adverſe Party. 1 *Ver.* 253.

[If on the Hearing Defendant is ordered to be examined on Interrogatories touching a Deed ſuppoſed to be in his Cuſtody, which on Examination he denies, there ſhall no Commiſſion be granted to examine Witneſſes (Publication being paſſed) tho' the Maſter certifies that he thinks it reaſonable. *Smith* v. *Turner*, *H.* 1735. 3 *P. W.* 413.]

After Publication a Witneſs before examined ſhall not be admitted to explain his Depoſition. 1 *Ver.* 125.

After Publication, the Party may have his Depoſitions exemplified. *Vide Practical Regiſter in Chancery* 141.

But the Maſter ſhall not ſign any Exemplification, 'till the Original be produced before him. *Ord. per Cla. Rules and Orders in Chancery* 118. *Vide Practical Regiſter in Chancery* 138, 9.

[If a Bill ſets forth, that there was heretofore a Bill preferred by another againſt the preſent Defendant's Father, who anſwered, and Depoſitions taken, and refers thereto. This Suit abated by Death before Hearing; theſe Depoſitions ſhall not now be publiſhed to be uſed in the preſent Cauſe, tho' on the Defendant's Motion, notwithſtanding Plaintiff's ſetting forth in his Bill. *Johns* v. *Stafford*, *in Sc. M.* 1719. *Bunb.* 50.]

(R) Examination in perpetuam Rei Memoriam.

HE who would examine Witneſſes *in perpetuam Rei Memoriam*, muſt exhibit his Bill, and thereby ſhew his Title, and the Antiquity of his Witneſſes, and

and then pray a Commiſſion to examine them, and a *Subpœna* againſt the Party concerned, to ſhew Cauſe to the contrary if he can. *Vide Practical Regiſter in Chancery* 31.

If the Defendant ſhews Cauſe to the contrary within fourteen Days, the Plaintiff ſhall not proceed. *Vide Practical Regiſter in Chancery* 32.

If he does not ſhew Cauſe, the Plaintiff ſhall proceed to the Examination of Witneſſes; and the Court will give Articles for the Examination. *Vide Practical Regiſter in Chancery* 32.*

* *Vide Practical Regiſter in Chancery* 35. *Cont.* as to the Articles.

[A Man may bring a Bill to perpetuate Teſtimony, where he cannot bring a Bill for Relief without waving the Penalty. *E. Suffolk* v. *Green*, *T.* 1739. 1 *Atkyns* 450.]

[Plaintiff is intitled to perpetuate Teſtimony on an uſurious Contract, tho' he does not offer to pay what is really due. *Ibid.*]

But if the Plaintiff prays Relief, his Bill ſhall be diſmiſſed. 2 *Vent.* 366.

Yet he may examine Witneſſes to prove a Promiſe, *&c.* which is to be performed after the Death of *A. R.* 1 *Rol.* 383. *C.*

This Bill lies to prove a *Modus decimandi.* 1 *Ver.* 185.

But ſuch Bill to prove a Right to a Common, Way, *&c.* before a Trial, will be diſmiſſed. 1 *Ver.* 308, 312.

Or. to prove a Will againſt a Purchaſer without Notice. *R.* upon a Plea, 1 *Ver.* 354.

Or, to examine Witneſſes, where there is no Impediment to a Trial at Law. *R.* upon a Demurrer. 1 *Ver.* 441.

[Tenant in Tail out of Poſſeſſion cannot bring Bill to perpetuate Teſtimony, till he has recovered Poſſeſſion by Ejectment; and Demurrer for this Cauſe would be allowed. *Brandlyn* v. *Ord*, *M.* 1738. 1 *Atkyns* 571.]

So a Bill by the Deviſee of a Perſon, now a Lunatick, to prove *in perpetuam Rei Memoriam*, will be diſmiſſed. 1 *Ver.* 106.

The Witneſſes may be examined by an Examiner of the Court. *Vide Practical Regiſter in Chancery* 36.

Or the Court may appoint Commiſſioners, in which the Defendant may join, if he pleaſes. *Vide Practical Regiſter in Chancery* 34.

And fourteen Days Notice ought to be given of the Execution of the Commiſſion. *Vide Practical Regiſter in Chancery* 34.

In the *Exchequer*, if the Defendant does not appear being ſerved with Proceſs, but is in Contempt, the Plaintiff upon Motion, ſhall have a Commiſſion to examine Witneſſes *de bene eſſe*. *Rules and Orders in Exchequer* 13. *Rule* 34.

If the Defendant appears, he may join in the Commiſſion, if he will, and croſs-examine the Witneſſes, if he gives the Names of Commiſſioners, within four Days after the Order for a Commiſſion. *Rules and Orders in Exchequer* 13. *Rule* 34.

If the Defendant afterwards makes Anſwer, the Plaintiff ſhall reply, and examine *de novo* the Witneſſes before examined who are alive, and upon the Return of the Commiſſion there ſhall be Publication of the Depoſitions thereby taken, with the Depoſitions of the Witneſſes before examined, who were dead before the ſecond Commiſſion. *Rules and Orders in Exchequer* 13. *Rule* 34.

In *Chancery*, no Witneſſes ſhall be examined, but the aged, or impotent. *Vide Practical Regiſter in Chancery* 31.

[A Witneſs, tho' neither old nor infirm, may be examined before Anſwer, on Affidavit that he alone is privy to the Forgery of a Deed. *Shirley* v. *Earl Ferrers*. *M.* 1733. 3 *P. W.* 77.]

And if the Defendant ſhews good Exceptions againſt a Witneſs, or other Cauſe for the Staying of the Proceeding, the Commiſſioners ought not to proceed, but to certify ſuch Matter with the Commiſſion. *Vide Practical Regiſter in Chancery* 32.

And the Commiſſioners ought to certify whether the Defendant appears, or not. *Vide Practical Regiſter in Chancery* 32.

Whether there was an *Affidavit* before them of Notice given of the Time and Place of the Execution. *Ibid.*

The Depoſitions ſhall not be read during the Life of the Witneſs, without Conſent, or Order of Court. *Vide Practical Regiſter in Chancery* 35.

And

And ſuch Order ſhall be upon *Affidavit*, that the Plaintiff is to have a Trial, to which the Witneſſes cannot come. *Vide Practical Regiſter in Chancery* 35.

[Plaintiff ſhall not have leave to examine Witneſſes *de bene eſſe*, becauſe they are going to the *Eaſt-Indies*, if they are his Servants, and he might keep them at Home. *Eaſt-India Company* v. *Naiſh*, *M.* 1732. *Bunb.* 320.]

And if the Court allows the Uſe of the Depoſitions, a Maſter ſhall open the Commiſſion and conſider them, and then the Plaintiff if he will, may exemplify them, and by Order of Court, give them in Evidence in another Court, *Vide Practical Regiſter in Chancery* 35, 6.

And after ſuch Publication the Defendant ſhall not examine any Witneſs concerning the ſame Matter. *Vide Practical Regiſter in Chancery* 33, 4.

Theſe Depoſitions ſhall not be allowed in Evidence, but only againſt the Defendant who had Notice, his Heirs or Aſſigns. *Vide Practical Regiſter in Chancery* 33.

Or, againſt one, who claims an Intereſt under the Defendant ſince the Bill exhibited. *Vide Practical Regiſter in Chancery* 36, 7.

(S) Cauſe ſet down for Hearing.

[AFTER Publication, and the Cauſe ſet down, the Bill may be amended by adding Parties; but no new Charge, nor a material Fact put in Iſſue, but a ſupplemental Bill muſt be brought. *Goodwin* v. *Goodwin*, *T.* 1746. 3 *Atkyns* 370.]

After all the Witneſſes examined and Publication paſſed, the Client, or Solicitor ought to attend the Six-Clerk for ſix Days before the End of the Term, and inform him of the State, and Circumſtances of the Cauſe. *Ord. per Cla. Rules and Orders of Chancery* 110. *Vide Practical Regiſter in Chancery* 186.

And the Six-Clerk ſhall procure the Cauſe to be ſet down for Hearing with the Regiſter, and ſhall be prepared to inform the Lord Chancellor, or the Maſter of the Rolls, *&c.* of the Nature of the Cauſe, at the Time of ſetting down Cauſes. *Ord. per Cla. Rules and Orders of Chancery* 110, 111. *Vide Practical Regiſter in Chancery* 187.

[No Fee ſhall be paid to the Six-Clerk, or Regiſter, or other Perſon for the ſetting down, or prefering any Cauſe, except their Term Fees, if they are in Arrear, *Ord. per Cla. Rules and Orders of Chancery* 111. *Vide Practical Regiſter in Chancery* 187.

And the Arrearages of ſuch Fees are Cauſe for ſtopping the Hearing of the Cauſe, when it is called on in Court, 'till they are paid. *Ord. per Cla. Rules and Order of Chancery* 111. *Vide Practical Regiſter in Chancery* 187, 8.

The Cauſes ſhall be ſet down according to the Order and Antiquity of the Publication. *Vide Rules and Orders of Chancery* 110. *Vide Practical Regiſter in Chancery* 186.

But none ſhall be ſet down in the ſame Term, when Publication paſſes. *Vide Practical Regiſter in Chancery* 185.

Nor before Certificate of the Six-Clerk, that all Pleadings are filed. *Ord.* 29 *July*, 1 *W. & M. Rules and Orders of Chancery* 185. *Vide Practical Regiſter in Chancery* 188.

So, in the *Exchequer*, no Cauſe ſhall be ſet down before Publication, without ſpecial Order. *Rules aud Orders in Exchequer* 11. *Rule* 27.

After Publication, every Cauſe ſhall be ſet down in the next Term, except in *London*, or within ſixty Miles of it; in which, if the Replication was filed in *Trinity*, or *Hilary* Term, and Publication paſſed the firſt Week of *Michaelmas*, or *Eaſter* Term, the Cauſe may be ſet down to be heard the laſt Day of Cauſes in *Michaelmas*, or *Eaſter* Term. *Rules and Orders in Exchequer* 11. *Rule* 27.

In *Chancery* the *Subpœna ad audiendum Judicium* ſhall be returned ſix or ſeven Days before the Day of Hearing of the Cauſe; and the Day of Hearing ſhall be indorſed upon it. *Vide Practical Regiſter in Chancery* 349.— In the *Exchequer*, it ſhall be ſerved ten Days before the Hearing, in *London*, or within ſixty

Miles of it, and fourteen Days in Places more remote. *Rules and Orders in Exchequer* 11. *Rule* 28.

But in *Chancery*, the Hearing being appointed in the Beginning of a Term, when ſix or ſeven Days cannot precede, ſo much Time is not neceſſary. *Vide Practical Regiſter in Chancery* 349.

And in the *Exchequer*, in *Trinity* Term ten Days Notice is ſufficient in Places above ſixty Miles from *London*. *Rules and Orders in Exchequer* 11. *Rule* 28.

(T) Hearing of the Cauſe.

(T. 1.) When the Defendant does not appear.

WHEN a Cauſe is heard upon Bill and Anſwer, *Vide ante*, (M.)

If at the Time of the Hearing the Defendant does not appear, tho' Proceſs appears to have been duly ſerved, his Anſwer ſhall be read; but the Decree ſhall not be abſolute againſt him, tho' there is Cauſe for a Decree for the Plaintiff. *Ord. per Cla. Rules and Orders of Chancery* 111. *Vide Practical Regiſter in Chancery* 190.

But the Regiſter ſhall ſay, *That the Court, for ſuch and ſuch Cauſes ſo decrees, if the Defendant does not pay the Coſts aſſeſſed to the Plaintiff, or his Attorney, and by ſuch a Time ſhew good Cauſe to the contrary. Ord. per Cla. Rules and Orders of Chancery* 112. *Vide Practical Regiſter in Chancery* 191.

And the Defendant ſhall not be admitted then to ſhew Cauſe, without a Certificate from the Plaintiff's Attorney of the Payment of the Coſts, or an *Affidavit* of Tender and Refuſal. *Ord. per Cla. Rules and Orders of Chancery* 112. *Vide Practical Regiſter in Chancery* 191.

And if the Court, at the Time allowed for Cauſe, confirms the Decree, the Defendant ſhall pay full Coſts.

So in the *Exchequer*, if a Defendant ſerved *ad audiendum Judicium*, makes Default, whereby there is a Decree againſt him *niſi*, &c. he ſhall not afterwards be heard to ſhew Cauſe, 'till he pays 5*l.* Coſts to the Plaintiff or his Attorney. *Rules and Orders in Exchequer* 12. *Rule* 29.

[If Defendant by his Anſwer denies the whole Equity of the Bill, and the Anſwer is reported inſufficient, and Defendant duly ſerved makes no further Anſwer, the Bill ſhall be taken *pro confeſſo*. *Semb. Davis* v. *Davis*, *H.* 1739. 2 *Atkyns* 21.]

[If one Defendant does not appear, and the whole Line of Proceſs goes againſt him, it is equal to proceeding to Outlawry at Law, and there may be a Decree againſt the other Defendants who appear. *Vaneſſen* v. *South-ſea Company*, *H.* 1749. 1 *Vezey* 395.]

[The Court will not declare a Will well proved againſt an Heir at Law Defendant, tho' he makes Default, unleſs the Proofs are read, *Webb* v. *Litcot*, *H.* 1743. 3 *Atkyns* 25.]

(T. 2.) When the Plaintiff does not appear.

If, at the Time of the Hearing, the Plaintiff does not appear, the Defendant ſhall be diſmiſſed with Coſts to be taxed by a Maſter. *Vide Practical Regiſter in Chancery* 190.

[As long as Depoſitions are in being, Defendant cannot move to diſmiſs for Plaintiff's Delay, but muſt ſet down the Cauſe to be heard *ad requiſit. defendentis*. But if he ſuppreſs Depoſitions on Plaintiff's Delay, he may move to diſmiſs for want of Proſecution. *Anon. in Sc. T.* 1718. *Bunb.* 23.]

[If a Commiſſion has been taken out to examine Witneſſes, but nothing done upon it, but Publication is paſt, the Defendant cannot move to have the Bill diſmiſſed, but the Cauſe muſt be ſet down, and if the Bill is diſmiſſed at Hearing, he has his full Coſts. *Skip* v *Warner*, *T.* 1747. 3 *Atkyns* 558.]

When the Plaintiff's Bill is diſmiſſed of Courſe, or by Order for want of Proſecution, it ſhall not be afterwards retained, without Motion, and a Certificate

cate of the Payment of the Coſts, from the Defendant's Attorney. *Ord. per Cla. Rules and Orders of Chancery* 118. *Vide Practical Regiſter in Chancery* 146.

So in the *Exchequer*, if the Defendant is ſerved and appears, and the Plaintiff does not attend, the Cauſe ſhall be put out of the Paper, and the Plaintiff ſhall pay 5 *l.* Coſts; and if the Defendant puts the Cauſe into the Paper to be heard the next Term, *ad requiſitionem Defendentis*, (as he may do) the Plaintiff ſhall not be heard till he has paid the 5*l.* Coſts. *Rules and Orders in Exchequer* 12. *Rule* 29.

(T. 3.) When there are not Parties.

There ought to be proper Parties to the Bill. *Vide Practical Regiſter in Chancery* 261, *&c.* *Vide Ante*, (E. 2.)

But if a proper Party is beyond Sea, upon an *Affidavit*, that it is not known, whether he be dead or alive, the Plaintiff ſhall have a Decree againſt the other Defendants, without Prejudice. 1 *Ver.* 487.

[A Cauſe for an Account and Diſtribution of perſonal Eſtate may be heard, when a Defendant who is Abroad, has not been ſerved, nor anſwered. *Rogers* v. *Linton*, *T.* 1725. *Bunb.* 200.]

[A Bill is never diſmiſſed for want of Parties, but ſtands over on paying Coſts of the Day; and decrees diſmiſſing Bills for want of Parties have been reverſed for that Reaſon. *Anon*, *M.* 1737. 2 *Atkyns* 15.]

[If a Bill is brought to redeem againſt the Repreſentatives of *meſne* Purchaſer without Notice, and againſt *puiſne* Purchaſer with Notice, and Plaintiff does not reply to the Anſwer of the *meſne* Purchaſer's Repreſentatives, there are not proper Parties before the Court. *Lowther* v. *Carlton*, *H*, 1740. 2 *Atkyns* 139.]

[If a Bill is brought againſt one Partner for a joint Demand, the other being not amenable becauſe out of the Kingdom, the Partner before the Court ſhall be decreed to pay the whole Debt. *Darwent* v *Walton*, *H.* 1742. 2 *Atkyns* 510.]

[If a Cauſe ſtands over for want of ſome proper Defendants, you cannot proceed againſt any other Defendant, without diſmiſſing the Bill as to thoſe who are improperly before the Court. *Wicks* v. *Marſhal*, *M.* 1746. 3 *Atkyns* 400.]

(T. 4.) What Evidence ſhall be admitted upon the Hearing.

(T. 4.) Depoſitions in the ſame, or a croſs Cauſe.

At the Time of the Hearing, after the Bill and Anſwer are opened by the Counſel, the Court proceeds to the Proof. *Vide Practical Regiſter in Chancery* 189, 190.

The uſual Proof is reading the Depoſitions made in the ſame Cauſe. *Vide Practical Regiſter in Chancery* 152.

Depoſitions in Croſs Cauſes, between the ſame Parties, heard at the ſame Time, ſhall be allowed upon both Cauſes without Motion.*—So, in the *Exchequer*. *Vide Rules and Orders in Exchequer* 11. *Rule* 26.

* *Vide Practical Regiſter in Chancery* 152. (By Order.)

Allowed, upon Motion. *Ca. Ch.* 236.

But when the Allowance was ordered upon the Motion of the Defendant, after Publication in the firſt Cauſe, and before Publication in the ſecond Cauſe, whether the Depoſitions for Proof of an Agreement, not alledged by the Anſwer of the Defendant in the firſt Cauſe, but alledged by his Bill in the ſecond Cauſe, ſhall be admitted, *Dub. Ca. Ch.* 236.

[If the Point in iſſue in the croſs Cauſe, was not in iſſue in the original Cauſe, the Depoſitions in the original Cauſe cannot be read in the croſs Cauſe. *Chriſtian* v. *Wrenn*, *M.* 1732. *Bunb.* 321.]

[Depoſitions in a croſs Cauſe, brought after a Decree pronounced in the original Cauſe, cannot be read touching the Matters in iſſue in the original Cauſe, but may as to Matters not in iſſue in the original Cauſe. *Wilford* v. *Beaſeley*, *P.* 1747. 3 *Atkyns* 501.]

[Tho' Depoſitions taken *de bene eſſe* are irregular, they cannot be objected to at the Hearing; you ſhould move to diſcharge the Order for Publication. *Dean of Ely* v. *Warren*, *T.* 1741. 2 *Atkyns* 189.]

[Depoſitions *de bene eſſe* ſhall be publiſhed, where it is morally impoſſible to examine the Witneſſes in chief; as if a Commiſſion has iſſued to examine in *Sweden*, the King whereof has refuſed to let it be executed, the Commiſſion is come back, and the King of *Sweden* has ordered a *publick* Examination before his own Judges. *Gaſon* v. *Wordſworth*, *T.* 1751. 2 *Vezey* 325, 336.

[Depoſitions *de bene eſſe*, taken many Years before, may be publiſhed with Depoſitions in a ſupplemental Cauſe, on Affidavit that ſome of the Witneſſes are dead, and that nothing can be learned of the others on Enquiry: But without Prejudice to Exceptions. *Anon T.* 1754. 2 *Vezey* 496.]

But no Witneſs ſhall be examined *vivâ voce* at the Hearing, without an Order before the Hearing of the Cauſe. *Vide Practical Regiſter in Chancery* 154. *Vide Rules and Orders in Exchequer* 10. *Rule* 23.

[Witneſſes are never allowed to be examined at large *vivâ voce*, at the Hearing. *Graves* v. *Budgell*, *P.* 1737. 1 *Atkyns* 444.

[*Vivâ voce* Examinations are allowed ſparingly, and only after Publication where Doubts have appeared in their Depoſitions, to clear ſuch Doubts and inform the Court. *Ibid.*]

[At moſt, only to prove Exhibits, not to let in other Examinations; and this at the Inſtance of the Party to uſe the Exhibits, but never of the contrary Party. *Ibid.*]

If the Plaintiff after Examination of Witneſſes, withdraws his Replication, takes Exceptions to the Anſwer, and replies to a new Anſwer, and upon a Commiſſion Witneſſes are examined, the Depoſitions upon the former Commiſſion ſhall be ſuppreſſed, if the Witneſſes are not re-examined after the laſt Replication, or allowed by the Court, upon Motion, to be uſed at the Hearing of the Cauſe. *Pr. Cha.* 386.

[If the Cauſe is brought to Hearing, and ſtands over with Liberty to add a Party, if he is a material Defendant, and concerned in Intereſt, the Depoſitions taken before cannot be read againſt him. *Niblett* v. *Daniel*, *M.* 1731. *Bunb.* 310.]

[The Rules of Evidence in general are the ſame in Equity as at Law. *D. Manning* v. *Letchmere*, *M.* 1737. 1 *Atkyns* 453. *Man.* v. *Ward*, *M.* 1741. 2 *Atkyns* 228.]

[A Leaſe and Poſſeſſion, and Payment of Rent under it, is a Preſumption of Right in the Leſſor; but if two Leaſes are ſet up, one cannot be read till Poſſeſſion under it is proved. *Ibid.*]

[Receipts for Rent are not Evidence of Title in Leſſor, unleſs the Payment is proved. *Ibid.*]

[Old Rentals, where Bailiffs admit Money received, are Evidence of Payment. *Ibid.*]

[A Bond or Mortgage is *prima facie* good Evidence, but if there are manifeſt Signs of Fraud in the Obligee, he ſhall be put to prove actual Payment. *Piddock* v. *Brown*, *T.* 1734. 3 *P. W.* 288.]

[It is a Motion of Courſe, that a Defendant for Form's Sake may be examined, ſaving juſt Exceptions. *Man* v. *Ward*, *M.* 1741. 2 *Atkyns* 228.]

[The Depoſition of a Defendant againſt whom Plaintiff can give no Evidence, may be read for another Defendant. *Piddock* v. *Brown*, *T.* 1734. 3 *P. W.* 288.]

[The Depoſition of a Defendant not intereſted may be read for another Defendant, and alſo for Plaintiff, tho' at Law Defendant cannot be examined for Plaintiff; But if Defendant may be liable for Coſts it cannot be read. *Barret* v. *Gore*, *M.* 1746. 3 *Atkyns* 401.]

[So the Depoſition of one Defendant charged with a Fraud, cannot be read for another Defendant, as it may tend to excuſe him with Regard to his own Coſts. *Eade* v. *Lingood*, *P.* 1747. 1 *Atkyns* 203.]

[The Evidence of a Co-defendant *particeps fraudis* and intereſted, ſhall not be read, tho' if only Attorney and Truſtee it may. *Bridgman* v. *Green*, *T.* 1755. 2 *Vezey* 627.]

[Co-defendants may read againſt each other whatever is proved for Plaintiff. *Walker* v. *Preſwick*, *T.* 1755. 2 *Vezey* 622.]

[A mere

[A mere nominal Truſtee may be examined in Equity, tho' not at Law. *Man* v. *Ward*, *M.* 1741. 2 *Atkyns* 228.]

[An Executor in Truſt is not a good Witneſs for his *ceſtuy que* Truſt, tho' a bare Truſtee is. *Croft* v. *Pyke*, *P.* 1733. 3 *P. W.* 180.]

[The Evidence of a Huſband ſhall be admitted, tho' his Wife is a Defendant, if the Intereſt of a third Perſon is concerned. *Cotton* v. *Lutterel*, *T.* 1738. 1 *Atk.* 451.]

[The Depoſition of the Wife of the *Prochein amy* of Plaintiff *Feme covert*, cannot be read for Plaintiff. *Head* v. *Head*, *P.* 1747. 3 *Atkyns* 511. *T.* 1747. 3 *Atkyns* 547.]

[If a Plaintiff executor examines his Son, and dies, leaving his Son Executor, who alſo takes out Adminiſtration *de bonis non* of the original Teſtator, and he revives, yet his Depoſition in the original Cauſe may be read. *Haws* v. *Hand*, *T.* 1743. 2 *Atkyns* 615.]

[If a Creditor brings Bill againſt an Executor for an Account of *Aſſets*, the Evidence of a Co-executor, tending to increaſe Teſtator's Eſtate, cannot be read, for he has an Intereſt. *Mabank* v. *Metcalf*, *T.* 1744. 3 *Atkyns* 95.]

[The Evidence of one having an Intereſt cannot be read, tho' he is ſatisfied, unleſs a Releaſe is produced. *Anon.* *M.* 1737. 2 *Atkyns* 15.]

[If there is an Agreement in Writing between *A.* and *B.* the Steward of *C.* for Sale of *A.*'s Eſtate to *C.* but the Covenant by *B.* and he bound in Penalty for the Performance, and *A.* brings Bill againſt *B.* and *C.* charging there was a Deafeazance prepared, but the Execution prevented by *B.*—*B.*'s Depoſition cannot be read for *C.* eſpecially if *B.* has examined Witneſſes. *Dixon* v. *Parker*, *H.* 1750. 2 *Vezey* 219.]

[Depoſitions to prove that Plaintiff (who ſues for Dower) had acknowledged a Bond to be given in lieu of Dower, tho' it does not appear on the Face of it, cannot be read. *Finney* v. *Finney*, *M.* 17 *G.* 2. *Wilſ.* 34.]

[If a Perſon joins fraudulently in granting an Eſtate without the uſual Covenants, but only that he has done no Act to incumber, his Depoſition may be read to impeach his Title to the Eſtate, and to ſhew it was done to carry on the Fraud. *Man* v. *Ward*, *M.* 1741. 2 *Atkyns* 228.]

[The Evidence of a Witneſs is not invalidated by Reaſon of his tender Years, if it is of a Circumſtance likely to make a great Impreſſion on his Mind. *Smith* v. *French*, *H.* 1741. 2 *Atkyns* 243.]

[The Depoſition of a Heathen Idolator, ſworn according to their Ceremonies in the moſt uſual and ſolemn Manner, may be read. *R.* on great Conſideration, *per Hardwicke*, C. *Lee* C. J. *Willis* C. J. and *Parker* C. B. *Omychund* v. *Barker*, *M.* 1744. 1 *Atkyns* 21.]

[On an Appeal from the Rolls, the Appellant, on Petition, may be let in to read new Evidence not read there, provided he will give up his Depoſit. *Hedges* v. *Cardonnel*, *T.* 1742. 2 *Atkyns* 408.]

[The Court will not enter upon a Determination of the conſtituting a Court of a foreign Nation, but will hear Evidence as to the Extent of it's Juriſdiction, and the Nature and Effect of the Proceedings and Sentence in it. *Gage* v. *Lady Stafford*, *T.* 1754. 2 *Vezey* 556.]

(T. 5.) In another Cauſe.

[A Decree, or Examinations of Witneſſes in a former Cauſe between the ſame Parties, may be read as Evidence, tho' not concluſive, altho' thereby there is not an Opportunity of examining between Co-defendants. *Aſkew* v. *Poulterers Company*, *M.* 1750. 2 *Vezey* 89.]

Depoſitions, in a former Cauſe in *Chancery*, admitted to be read, upon Motion, the ſame Matter being then under Examination, as now. *Ca. Ch.* 73, 175.

Tho' neither the Plaintiff, nor any under whom he claims, was Party to the former Cauſe. *R. Ca. Ch.* 73.—*Cont. at Law*, 2 *Rol.* 679. *l.* 35.

Tho' neither the Plaintiff, nor the Defendant, was then a Party. *Ca. Ch.* 73. *Cont.* 1 *Ver.* 431.

And tho' the former Cauſe was more than 30 Years paſt, and the Witneſſes dead. *Ca. Ch.* 73.

So, Depoſitions in a Cauſe diſmiſſed for want of Equity for Relief. *Ca. Ch.* 175.

So, Depoſitions for a Legatee againſt an Executor, to prove Aſſets, in a Bill brought by another Legatee for the ſame Intent. 1 *Ver.* 413.

[A Decree in a Former Cauſe wherein the then Leſſee, and not the Impropriator, was Plaintiff, and the then Tenants were Defendants, admitted as Evidence. *Biſhop Lincoln* v. *Ellis*, *T.* 1722. *Bunb.* 110.]

[If, on a Bill brought by Deviſees to eſtabliſh a Will, the Heir at Law prevails to ſet it aſide, he ſhall have the Benefit of the Depoſitions in that Cauſe, in another brought by him againſt a Purchaſer before the Anſwers came in in the former. *Grath* v. *Ward*, *P.* 1741. 2 *Atkyns* 174.]

And if the Plaintiff or Defendant obtains an Order for the Uſe of Depoſitions in another Cauſe, the adverſe Party may uſe them, without Motion, unleſs he be inhibited by the ſame Order. *Ord. per. Cla. Rules and Orders of Chancery* 109.

[Depoſitions in a former Cauſe for a *Modus*, where the Impropriator had not anſwered, nor the Vicar replied, cannot be read. *Baker* v. *Sweet*, *in Sc. M.* 1721. *Bunb.* 91.]

[A Decree (in a Tithe Cauſe) cannot be read unleſs proved to be touching the ſame Lands or Title. *Benſon* v. *Olive*, *T.* 1730. *Bunb.* 284.]

[A Verdict between the ſame Parties, obtained ſince Iſſue joined in Equity, cannot be read, unleſs proved to be touching the ſame Lands. *Ibid.*]

But when the former Cauſe was diſmiſſed for Irregularity, the Depoſitions therein can never be admitted in another Cauſe for the ſame Matter; for the former Cauſe never was regularly in Court. *R. Ca. Ch.* 175.

So a Bill exhibited by the Defendant againſt the Plaintiff at another Time, ſhall be read, upon Proof, that it was exhibited with his Privity. *Ca. Ch.* 65.

[In a Cauſe againſt a Bankrupt and another, the Plaintiff cannot read the examination of that other before the Commiſſioners under the Bankruptcy, unleſs it is proved in the Cauſe that ſuch Examinations were taken before the Commiſſioners. *Eade* v. *Lingood*, *P.* 1747. 1 *Atkyns* 203.]

[The Examination of Defendant's Attorney before Commiſſioners of Bankrupt, to prove a Fraud, cannot be read, unleſs he has been examined in chief in the Cauſe. *Hamond* v. *Myers*, *H.* 1746. 3 *Atkyns* 415.]

[But the Examination of Defendant before Commiſſioners may be read, if he has ſet up a different Right by his Anſwer, to ſhew the Inconſiſtency. *Ibid.*

[In the Exchequer, the Court will ſometimes refuſe to give Leave on Motion to read the Decree and Depoſitions in a former Cauſe, ſaving juſt Exceptions, tho' a Motion of Courſe in Chancery; for *there*, having only one Judge, he may diſallow them if he ſees juſt Exception; but *here*, having four Judges, if they ſhould be equally divided in Opinion, they muſt then be read whatever Reaſon might be to the contrary, for no juſt Exception could appear. *Biſhop Hereford* v. *Cooper*, *M.* 1730. *Bunb.* 293.]

(T. 6.) The Defendant's Anſwer.

So the Anſwer of the Defendant may be read againſt him; but then the Whole may be read by the other Party.

So if a Defendant, being an Infant, anſwers by Guardian, and at full Age neither amends, or makes a new Anſwer, as he may do, but prays a Hearing of the Cauſe *de novo*, his Anſwer ſhall be Evidence againſt him. *Eq. R.* 4.

[If the Plaintiff is charged by an Anſwer, he muſt diſcharge himſelf by Proof, and cannot do it by reading the whole Anſwer. *Parteriche* v. *Powlet*, *T.* 1742. 2 *Atkyns* 383.]

[Defendant's Anſwer in another Cauſe may be read, to ſhew that a Deed in Queſtion once exiſted. *Whitfield* v. *Fauſſet*, *H.* 1749. 1 *Vezey* 387.]

[The Anſwer of two Defendants, Arbitrators, may be read againſt a third Party to the Award. *Mullins* v. *Symonds*, *P.* 1725. *Bunb.* 196.]

[The Anſwer of a Defendant diſclaiming all Right to an Eſtate, and not brought to Hearing, ſhall be read againſt another Defendant. *Hill* v. *Adams*, *P.* 1740. 2 *Atkyns* 39.]

[Defendant is not bound by an Admiſſion of a Conſequence in Law, or a Conſequence in Equity, for the Court is Judge of it. *Pearce* v. *Graves*, *T.* 1747. 3 *Atkyns* 522.]

If the Defendant by his Anſwer denies an Agreement, &c. it ought to be proved by two Witneſſes, for one is not ſufficient. 2 *Ca. Ch.* 8. 1 *Ver.* 161.

[If Defendant's Anſwer is equally ſtrong with the Depoſition of one Witneſs, there can be no Decree againſt him, but if concurring Circumſtances ſupport the Depoſition, there may. *Walton* v. *Hobbs*, *M.* 1739. 2 *Atkyns* 19. *Jenſon* v. *Rany*, *H.* 1740. 2 *Atkyns* 140. *Only* v. *Walker*, *T.* 1746. 3 *Atkyns* 407.]

[If the Denial of Defendant by his Anſwer is not clear, poſitive, and full to the Fact, the Court will decree on the Teſtimony of one Witneſs. *Le Neve* v. *Le Neve*, *M.* 1748. 3 *Atkyns* 646. 1 *Vezey* 64.]

A Deed, mentioned in the Bill, to which the Defendant ſays, *He believes there is ſuch a Deed*, ſhall not be read, without Proof; for the Confeſſion does not admit more than is alledged by the Bill, and does not warrant the Reading of a Deed with like Clauſes. *R.* 2 *Vent.* 161. (T. 7.) Deeds.

[The Probate of a Will may not be read in caſe of a real Eſtate, tho' Defendant has admitted he believes there is ſuch a Will; otherwiſe if his Admiſſion had been full. *Mullins* v. *Pratt*, *in Sc. T.* 1716. *Bunb.* 6.]

So a Deed proved upon a Commiſſion againſt one Defendant only, ſhall not be admitted againſt the other Defendant. 2 *Vent.* 361.

[A Deed 40 Years old, without Proof, or ſhewing where or how they came by it. *Benſon* v. *Olive*, *T.* 1730. *Bunb.* 284.]

[But not a Deed of 35 Years old, in general, tho' ſometimes. *Ibid.*]

[An ancient Copy of a Bargain and Sale inrolled at the Chapel of the Rolls, atteſted by five Witneſſes, or even without Atteſtation, is good. *Harvey* v. *Philips*, *P.* 1743. 2 *Atkyns* 541.]

[If Defendant by Anſwer in another Cauſe has admitted that a Deed in queſtion, a Releaſe, once exiſted, and Defendant has the Leaſe belonging to this Releaſe, Plaintiff may read the Draught of the Releaſe, if well proved. *Whiſfield* v. *Fauſſet*, *H.* 1749. 1 *Vezey* 387.]

[A Counterpart may be read, if the original Deed is loſt; if no Counterpart, a Copy; if no Copy, parol Evidence how it was loſt. *Villiers* v. *Villiers*, *M.* 1740. 2 *Atkyns* 71.]

[The Book of Impropriator's Predeceſſor admitted as Evidence of a *Mortuary*. *Anon. in Sc. T.* 1719. *Bunb.* 46.]

[Miniſters Accounts tho' ſubſequent to 31 *H.* 8. may be read in a Tithe Cauſe. *Benſon* v. *Olive*, *T.* 1730. *Bunb.* 284.]

[Entries in the Accounts of the Lord's Steward, admitted to prove a *Modus* to the Vicar, in Diſcharge againſt the Impropriator the Plaintiff. *Woodnoth* v. *Lord Cobham*, *M.* 1724. *Bunb.* 180.]

[A Bailiff's Accounts have been admitted as Evidence of Quit-rents. *Sed Q.* as to a Lord of a Manor's Books. *Anon. T.* 1719. *Bunb.* 46.]

[That an Account may be Evidence of Quit-rents, it muſt appear to be a Bailiff's, and ſigned by him. *Franks* v. *Carry*, *H.* 1740. 2 *Atkyns* 140.]

[An Entry in a Man's Book of Accounts, may, on a Reference to a Maſter, be read, not as Evidence of the Debt, but of a Claim of it in the Life-time of the Deceaſed. *Lefebure* v. *Worden*. *M.* 1750. 2 *Vezey* 54.]

[Letters or Books of an Agent or Servant may be read if he is dead, otherwiſe not. *Peacock* v. *Monk*, *H.* 1750. 2 *Vezey* 190.]

[So a *Feme covert* having a ſeparate Eſtate, and giving Bond, her Declarations may be read. *Ibid.*]

[An Inquiſition of Lunacy, and other Inquiſitions, may be read, but are not concluſive Evidence, for they may be traverſed. *Sergeſon* v. *Sealey*, *M.* 1742. 2 *Atkyns* 412.]

[The Cuſtoms of neighbouring Manors may be admitted to ſhew the Cuſtom of the Manor in Queſtion, in Mine Countries and Fen Countries, where there is a Similitude. *Dean of Ely* v. *Warren*, *T.* 1741. 2 *Atkyns* 189.]

[A Certificate of an original Agreement between Rector and Vicar, from the Abbot of a foreign Abbey, cannot be read, if it does not appear that it came out of

of the Charter-Houſe of the Abbot, or that he is the proper Officer to keep the Records. *Carte* v. *Ball*, P. 1747. 3 *Atkyns* 496.]

[*Items* in a Partnerſhip Account relating to the particular Intereſt of the Book-keeper, will not be ſupported. *Smith* v. *D. Chandos*, P. 1741. 2 *Atkyns* 159.]

[If a Bond, &c. has been delivered up to Plaintiff, he cannot read parol Evidence to the Contents of it, whether the Bill is to be relieved againſt it, or whether it comes in by way of collateral Evidence. *Cole* v. *Gibſon*, T. 1750. 1 *Vezey* 503.]

[A Liſt of Bank Notes in Teſtator's Hand-writing, ſome marked as received, others as not received, cannot be read in Evidence, tho' many Years have elapſed without any Demand on the unreceived Notes, which are ſuppoſed to be loſt. *Glynn* v. *Bank of England*, M. 1750. 2 *Vezey* 38.]

[Exhibits proved *viva voce* at the Hearing, cannot be read where there is a Right to controvert, or to a Croſs-examination. *E. Pomfret* v. *Ld. Windſor*, T. 1752. 2 *Vezey* 472.]

[A Deed may be proved *viva voce* at the Hearing, but not a Will. *Harris* v. *Ingledew*, H. 1730. 3 *P. W.* 91.]

[A Will of a real Eſtate ſhall not be proved as an Exhibit. *Niblett* v. *Daniel*, M. 1731. *Bunb.* 310.]

[The Court will order publick Books (as of a Manor Court) to be produced, in whatever Hands they are, but not private. *Anon.* T. 1754. 2 *Vezey* 578.]

[An Executor who was Counſel and drew the Draught of an Annuity, to ſet aſide which a Bill is brought, ſhall be obliged to leave the Draught with his Clerk in Court, but not on Oath. *Stanhope* v. *Roberts*, M. 1741. 2 *Atkyns* 214.]

[A Corporation, as Truſtees for a Charity, ſhall not be obliged to produce their Books relating to the Truſt, tho' they ſubmitted by their Anſwer to produce as the Court ſhould direct. *Attorney-general* v. *City of Coventry*, M. 1730. *Bunb.* 290.]

[If Defendant's Witneſs proves a Deed, and refers to it, yet Plaintiff cannot compel him to produce it. *Hodſon* v. *E. Warrington*, H. 1729. 3 *P. W.* 35.]

(V) Interlocutory Orders.

THE Orders made by the Court upon Hearing are Interlocutory, or Final and Decretal. *Vide Practical Regiſter in Chancery* 253.

The Interlocutory, (which comprehend all Orders made by the Court before the Decree) ſhall not be explained by Petition, but by Motion upon Notice to the other Party. *Vide Practical Regiſter in Chancery* 255.

[An Interlocutory Order, or even a Decree, if gained by Colluſion, may be ſet aſide on Petition. *Sheldon* v. *Forteſcue* A. P. 1731. 3 *P. W.* 104.]

[An Order on a Petition made on hearing Counſel on both Sides, is not diſcharged on Motion; on a Petition *ex parte*, it is. *Biſhop* v. *Willis*, M. 1750. 2 *Vezey* 113.]

[The Court can make an Order in the Nature of a Decree, on Motion or Petition, with Conſent of all Parties, but not for Sale, or Mortgage of a Term, to be a Charge on the Inheritance of an Infant Plaintiff. *Beard* v. *E. Powis*, T. 1751. 2 *Vez.* 399.]

[Yet on Plaintiffs affirming their Conſent to a Petition, (tho' the Cauſe is abated by the Infant Plaintiff's Marriage with Defendant, and not revived) the Court will declare it will not reſtrain Truſtees from raiſing and paying. *Ibid.*]

An Order made without Mention of a former Order, concerning the ſame Matter, is ſurreptitious, and ſhall not be uſed. *Vide Practical Regiſter in Chancery* 256.

Nor ſhall it be entred after the 8th Day from the pronouncing it, excluſive. *Vide Practical Regiſter in Chancery* 256. *Vide*, for the Entry, *Ante*, (B. 6.)

The Conſent of the Solicitor to an Interlocutory Order is ſufficient. *Ca. Ch.* 86.

In

In the *Exchequer*, after Judgment upon an Hearing, or Rule upon a Motion pronounced, the Minutes ought to be repeated openly in Court, before the Hearing of another Cauſe, or Motion, to the Intent, that any Miſtake may be rectified. *Rules and Orders in Exchequer* 12. *Rule* 30.

[An Order that a Cauſe ſhall ſtand over indefinitely, does not imply, that it is put off only to next Term. *P.* 1737. 2 *Atkyns* 2.]

[If there is a Variation between the original Will and the Probate, the Cauſe muſt ſtand over, and the Parties may apply to the Spiritual Court for Amendment. *Marſh* v. *Howe*, *T.* 1740. 2 *Atkyns* 50.]

[The Court never orders any Thing to be pulled down on Motion, rarely on Decree. *Ryder* v. *Bentham*, *T.* 1750. 1 *Vezey* 543.]

(W. 1.) Reference to a Maſter.

WHEN the Court would be informed of any Fact, it is uſually referred to a Maſter; as, to examine the Sufficiency of an Anſwer. *Vide Rules and Orders in Chancery* 119. *Vide Practical Regiſter in Chancery*, 305, 6.

To take Accounts. *Vide Practical Regiſter in Chancery* 305.

[A Party may have the Affidavit of his own Solicitor referred for Impertinence. *Phillips* v. *Phillips*, *M.* 1746. 3 *Atkyns* 391.]

[If Defendant pleads a Decree of Diſmiſſion of a former Cauſe for the ſame Matters, in Bar to Plaintiff's Demand on his new Bill, if Plaintiff does not apply to refer to a Maſter to ſtate whether there is ſuch Decree, but ſets down the Cauſe for Hearing, it is a Waver of his Right of Application for ſuch Reference, and the Court will determine it. *Morgan* v. *Morgan*, *H.* 1738. 1 *Atk.* 53.

[The Court will not make an Order for a Maſter to admit Depoſitions in a former Cauſe between the ſame Parties to be read, for he may judge if they are proper, and if he is miſtaken, you may except. *Anon.* *T.* 1747. 3 *Atk.* 524.]

[Reſervation of further Directions does not reſerve Intereſt which ought to be expreſsly directed by the Decree to be reſerved; but after Direction of Trial at Law, Reſervation of general Directions includes Coſts, Intereſt, *&c.* *Champ.* v. *Moody*, *T.* 1752. 2 *Vezey* 470.

But a Reference of the State of the Caſe is not frequent, without Conſent of the Parties. *Vide Practical Regiſter in Chancery* 306.

Nor a Reference to determine the Cauſe, except where the Parties are poor, or of kin, or do conſent. *Ibid.*

Nor a Reference to take Accounts, 'till the Hearing of the Cauſe. *Vide Practical Regiſter in Chancery* 307, 309.

A Reference to examine Court Rolls is made to two Maſters. *Vide Practical Regiſter in Chancery* 307.

[The Court will compel Witneſſes (tho' Strangers) to attend. *Shorter* v. *Scortin*, *T.* 10. *G.* *Bunb.* 169.]

[A Party once examined may be examined again on new Interrogatories to the ſame Matter without an Order, the Maſter being Judge; but a Witneſs may not, without Order. *Cowſlade* v. *Corniſh*, *P.* 1751. 2 *Vezey* 270.]

[A Maſter may proceed *ex parte* without Order, if the other Party does not attend. *Ex parte Bax*, *T.* 1751. 2 *Vezey* 388.]

(W. 2.) Report.

The Report or Certificate of the Maſter ought to be ſuccinct and plain, without Recital of all the Points of the Order of Reference, or the Debates of the Counſel, upon which it was founded. *Ord. per Cla. Rules and Orders of Chancery* 118. *Vide Practical Regiſter in Chancery* 320.

The Maſter uſually delivers his Opinion in the Report, if the Caſe be not difficult. *Vide Practical Regiſter in Chancery* 319.

And if it be difficult, he ſhall make a ſpecial Report; but that ſhall not be upon the Importunity of Counſel, but only when the Court, or the Intricacy of the Caſe, in his Judgment, requires it. *Ord. per Cla. Rules and Orders of Chancery* 118. *Vide Practical Regiſter in Chancery* 319, 320.

[Maſters ſpecial Reports ſhall not ſet forth the Evidence and their Opinion on it, but only ſtate the bare Matter of Fact. *Dſſ. Marlbro'* v. *Wheat, H.* 1736. 1 *Atkyns* 454.]

The Report ought not to exceed the Order of Reference. *Vide Practical Regiſter in Chancery* 320.

[Under a Decree to account, the Maſter may ſtate *ſpecial Matter*, tho' there is no Direction ſo to do. *Anon. T.* 1743. 2 *Atkyns* 621.]

It ſhall be made upon Conſideration of the whole Anſwer, or Matter referred, that thereby the Court may be fully informed. *Ord. per Cla. Rules and Orders of Chancery* 119. *Vide Practical Regiſter in Chancery* 320.

As, if it be referred, whether ſuch a Thing be confeſſed or alledged by the Anſwer, the Maſter ſhall alſo conſider, how ſuch Confeſſion is balanced, or avoided, by another Part of the Anſwer. *Ord. per Cla. Rules and Orders of Chancery.* 119. *Vide Practical Regiſter in Chancery* 320.

After the Report is made, it ſhall be filed with the Regiſter, under the Hand of the Maſter, and then confirmed by the Court, unleſs Cauſe is ſhewn to the contrary, within ſeven Days, by the other Side. *Vide Practical Regiſter in Chancery* 323.

If Cauſe is not ſhewn, it ſhall be confirmed abſolutely.

[If a Report is confirmed *niſi*, and by the Regiſter's Minutes at a ſubſequent Seal in the ſame Cauſe, it is taken down *Order abſolute*; but never entred; the Court will not order it to be entred *nunc pro tunc*, unleſs on recent Application, on a Motion of Courſe; after Length of Time there muſt be Notice. *Anon. T.* 1747. 3 *Atkyns* 521.]

Yet a Report, being poſitive, and not to ground a Decree, ſhall be of Force, and Proceſs ſhall be awarded immediately for the Performance, unleſs the other Party, upon Notice, files Exceptions to it with the Regiſter within 8 Days in Term-time, or in the Seals, or if it be after the Seals, within 4 Days of the next Term. *Ord per Cla. Rules and Orders of Chancery* 120. *Vide Practical Regiſter in Chancery* 323.

By Order 29 *Oct.* 4. *W. & M.* Reports ſhall be filed with the Regiſter, within 4 Days after Signing, who ſhall indorſe the Day of filing; and all Proceedings thereon before filing ſhall be void. *Rules and Orders of Chancery* 189. *Vide Practical Regiſter in Chancery* 321.

In the *Exchequer*, a Report ought to be delivered ſix Days before the Time fixt for the Hearing of the Cauſe, to the Clerk in the Cauſe, who ſhall forthwith give Notice thereof to the Clerk on the other Side. *Rules and Orders in Exchequer* 14. *Rule* 36.

(W. 3.) Exceptions to the Report.

If Exceptions are taken to the Report, they ought to be filed with the Regiſter within 8 Days after the Report filed, if it be within the Term, or the Seals. *Vide Rules and Orders of Chancery* 120. *Vide Practical Regiſter in Chancery* 323.—In the *Exchequer*, two Days before the Hearing of the Cauſe. *Rules and Orders in Exchequer* 14. *Rule* 36.

If in the Vacation, within 4 Days of the next Term. *Vide Rules and Orders of Chancery* 120. *Vide Practical Regiſter in Chancery* 323.

And he, who files the Exceptions, ſhall depoſit 40 *s.* * with the Regiſter, to be paid to the other Party, with other Coſts as the Court ſhall think proper, if they are diſallowed. *Ord. per Cla. Rules and Orders of Chancery* 120.

If they are allowed, the 40 *s.* * ſhall be returned. *Ord. per Cla. Rules and Orders of Chancery* 120, 1.

So, if any one Exception is allowed, as, when the Maſter reports an Anſwer inſufficient in ſeveral Particulars, and the Exceptant prevails in ſome Particular, which is not inſufficient in it, the 40 *s.* ſhall be returned. *Per Cowper, H.* 4 *Anne.*

But by *Rule* 12. *Feb.* 1670. The Exceptant ſhall pay 10 *s.* over the 40 *s.* for every Exception, or diſtinct Part of an Exception over-ruled. Confirmed by *Rule* 30 *Apr.* 2 *J.* 2. *Rules and Orders of Chancery* 142, 168.

* Marginal Note of *Clar. Ord.* is 5 *l.* and ſo is *Practical Regiſter in Chancery* 169,

And by Order 17 *January*, 1 *W. & M.* Tho' the Exception be waived; and if the Exception is declared to be frivolous and impertinent, he ſhall pay for it 20*s.* *Rules and Orders of Chancery* 186. *Vide Practical Regiſter in Chancery* 169.

The Regiſter ſhall enter the Exceptions in Courſe, to be determined by the Court. *Ord. per Cla. Vide Rules and Orders of Chancery* 120. *Vide Practical Regiſter in Chancery* 325.

And the Paper of the Day ſhall be ſet up by the Regiſter in his Office for two Days before. *Ord. per Cla. Rules and Orders of Chancery* 120. *Vide Practical Regiſter in Chancery* 325, 6.

And Notice of the Day ſhall be given, by the Exceptant, to the other Party. *Ord. per Cla. Rules and Orders of Chancery* 120. *Vide Practical Regiſter in Chancery* 325.

[If a Bill is referred for Impertinence, and the Maſter reports it Pertinent, the Defendant may except generally, and go upon it without pointing out the particular Impertinence by the Exception. *Mackworth* v. *Briggs*, *P.* 1741. 2 *Atkyns* 182.]

[No Matter not objected to before the Maſter, ſhall be gone into. *Huſe* v. *Lawes*, *in Sc. M.* 1721. *Bunb.* 93. *Ex parte Bax*, *T.* 1751. 2 *Vezey* 388.]

[If a Maſter varies his Report on Objections, the Party may take Exceptions without other Objections. *Ex parte Bax*, *T.* 1751. 2 *Vezey* 388.]

[A Party may obtain Leave to file an Exception, tho' the Maſter was attended by his Solicitor, who made no Objection, and tho' Conveyances have been drawn and executed in conſequence of the Maſter's Approbation in his Report. *Baſkerville* v. *Baſkerville*, *H.* 1741. 2 *Atkyns* 279.]

[If the Error in the Maſter's Report is owing to the Exceptant's not laying a material Evidence before him, the Court will not order him to review his Report, but on the Exceptant's giving up his Depoſit. *Hodges* v. *Cardonel*, *T.* 1742. 2 *Atkyns* 408.]

[After Exceptions argued, and the Report confirmed, the Court will not order the Maſter to review his Report; but Errors in Computation merely, may be ſet Right at any Time. *Hawkins* v. *Day*, *M.* 1748. 1 *Vezey* 189.]

[If a Report is confirmed without Exception or Objection, the Court will not open it on a Point of Form, if material Juſtice is done; tho' a Lunatick is intereſted. *E. Bath* v. *E. Bradford*, *T.* 1754. 2 *Vezey* 587.]

(W. 4.) Final References.

Sometimes the Court refers a Cauſe to a Maſter, or others, to be determined by their Award. *Vide Practical Regiſter in Chancery* 306.

But ſuch Reference is made by the Conſent of all Parties. *Ca. Ch.* 86.

And the Conſent of the Solicitor is not ſufficient. *R. Ca. Ch.* 86, 7.

Nor is it ſufficient, that any Party attends upon the Reference, unleſs he does actually conſent. *Ca. Ch.* 87.

But the Solicitor, who conſents, ſhall not pay Coſts, tho' the Award was made upon his Conſent, and afterwards reverſed for that Reaſon; for his Conſent was void, and it was the Folly of the other Side to proceed upon it. *Ibid.*

And tho' ſuch an Award be afterwards affirmed by a Decree, it ſhall be reverſed upon a Review, if it does not appear to have been made by the Conſent of all Parties. *R. Ca. Ch.* 86, 7.

So, if the Award be only of Part of the Matters referred. *R. Ca. Ch.* 87.

Or, impoſſible, or repugnant. *R. Ca. Ch.* 87.

(X.) Trial by Common Law.

SOMETIMES the Court refers the Matter to a Trial by the Common Law, upon an Iſſue by them directed. *Vide Practical Regiſter in Chancery* 223.

As, if it be doubtful, whether the Plaintiff, who ſues as Adminiſtratrix to her Huſband, has her Huſband living, or not. *R. Ca. Ch.* 50.

[If a Man and Woman deny their Marriage by their Anſwer, it ſhall be left to a Jury. *Revel* v. *Fox*, *P.* 1751. 2 *Vezey* 269.]

In

In a Bill for a Legacy, &c. if the Defendant controverts the Will, it ought not to be eſtabliſhed by a Decree, before a Trial at Law of the Validity of the Will. *R. inter Cook and Parſons, 6 Feb. 13 W. 3. and a Decree per Finch Cont. reverſed. R. Eq. Ca.* 90. *

* 2d Part of 2 *Mod. Ca.*

[On an Iſſue directed to try the Validity of a Will, the Court may give ſpecial Directions to know, if the Jury finds againſt it, whether it is for Forgery or Defect in the Execution. *Barnſley* v. *Powel, T.* 1748. 1 *Vezey* 119.]

Or, if it is doubtful, whether a prior Mortgage is executed, or ſatisfied. *Eq. Ca.* 39.*

So, if a Fact be controverted, a Trial is uſually directed; as, whether there is ſuch a Cuſtom, Preſcription, &c. *Vide* 1 *Ver.* 489.

[Granted on a Bill againſt a Judgment by Default, on a *South-Sea* Contract, to try if Defendant was poſſeſſed of Stock. *Anſtruther* v. *Chriſtie, T.* 1724. *Bunb.* 178.]

[On a Bill for Tithe of Fiſh by Cuſtom, tho' there was a former Decree eſtabliſhing the Cuſtom, ſigned by 130 Pariſhioners, and no Evidence by Defendants againſt it. *Gweaves* v. *Kelynax, T.* 1727. *Bunb.* 239.]

[The Court may direct an Iſſue to try a *Modus*, tho' the Evidence varies a little from the Bill. *Laitkes* v. *Chriſtian, M.* 1734. *Bunb.* 340.]

[If on a Bill for Tithes a *Modus* is ſet up, and it is admitted by the Parſon, that there have been ſuch cuſtomary Payments Time immemorial, but he inſiſts the *Modus* is void, as unreaſonable, uncertain, &c. the Court will not over-rule the *Modus* without directing an Iſſue. *Hardcaſtle* v. *Smithſon, T.* 1745. 3 *Atkyns* 245.]

[The Court will order a Trial *on Motion*, if it is agreed that the Point muſt be tried, as, whether Defendant has a Right to build, whereby Plaintiff's Lights are obſtructed. *Ryder* v. *Bentham, T.* 1750. 1 *Vezey* 543.]

Whether a Judgment, Bond, Debt, &c. be ſatisfied. *Ch. R.* 3.

So the Court ſometimes directs a Trial of a Fact, which gives a Right, tho' it was in Iſſue before, upon a Commiſſion to examine Witneſſes. 2 *Ca. Ch.* 3.

So, if the Queſtion in Iſſue be, whether there was an Agreement, the Court may direct a Trial thereupon, whether the Agreement was waived. *R.* 2 *Ca. Ch.* 46.

So there ſhall not be a Decree to bind the Inheritance generally, without two Trials, if the Parties deſire it. *Vide* 1 *Ver.* 293.

So, if the Matter be of Value, a ſecond Trial ſhall be directed. *R.* 2 *Ver.* 75.

[There muſt be an original Motion for a new Trial, for the Court will not anſwer a Petition for it when the Cauſe comes on, upon the Equity reſerved. *Attorney-general* v. *Montgomery, T.* 1742. 2 *Atkyns* 378.]

[New Trial will not be granted, unleſs the Application be recent, even tho' the Equity reſerved has not been ſet down ſooner, for the Party wanting it ſhould have ſet it down. *Legard* v. *Daly, H* 1748. 1 *Vezey* 192.]

[After Iſſue directed, and Trial had, the Court will not direct a new Trial, becauſe the Verdict gives Defendant more than he claimed by his Anſwer, nor on pretence of Surprize, if Plaintiff oppoſed putting off the Trial, nor becauſe one of the Plaintiffs is an Infant, nor becauſe one of Defendant's Anceſtors was attainted (which gives Right to the King but not to Plaintiff) tho' the Thing in Diſpute is Land of great Value. *Ibid.*

[If there have been two Trials, the laſt at Bar, the Court will ſuffer that to prevail, and not grant a new Trial. *Attorney-general* v. *Montgomery, T.* 1742. 2 *Atkyns* 378.]

But after a Plea to a Bond, *quod ſolvit ad diem*, if the Defendant in *Chancery* ſuggeſts that the Bond was not executed, or that it was obtained by Fraud, *Chancery* may well order Payment of the Bond, without directing a Trial of the Validity of it, which was admitted by the Defendant's Plea upon the Suit at Common Law. *R. in Parl. Ca. Parl.* 16.

So, if the Defendant by Fraud ſuppreſſes a Deed, the Court will make a Decree, without directing a Trial. *Ca. Ch.* 293.

So a Trial ſeems to be in the Diſcretion of the Court.

So the Court may direct a Special Iſſue, or, if there is no Impediment, put the Party to his Action at Law. 2 *Ver.* 503.

[The Court may ſend a Caſe to be argued before two Judges at their Chambers, *Rigden* v. *Vallier*, *H.* 1741. 3 *Atkyns* 731.]

When a Trial ſhall be inforced upon an Original Bill. *Vide Poſt*, (4 V.)

(Y. 1.) Decree.

A Decree by the Court ſhall be drawn with convenient Brevity, reciting only the Subſtance of the Proceedings briefly. *Vide Practical Regiſter in Chancery* 127.—So in the *Exchequer*. *Rules and Orders in Exchequer* 12. *Rule* 32.

If it be made by the Maſter of the Rolls, or a Judge, it ſhall be ſigned by them, and afterwards by the Chancellor, or Keeper. *Vide Practical Regiſter in Chancery* 123, 127.

And before it is preſented to them to be ſigned, it ſhall be ſigned by the Six-Clerk, to whom it belongs, or his Deputy. *Ord. per Cla. Rules and Orders of Chancery* 117. *Vide Practical Regiſter in Chancery* 123.

And the Six-Clerks are to keep a publick Book of all Decrees made and ſigned; and therefore the Regiſter, at the Beginning of every Term, ſhall give them a Liſt of all the Decrees and Diſmiſſions ſigned by the Chancellor, in the Term or Vacation precedent. *Ord. per Cla. Rules and Orders of Chancery* 117.

Every Decree ſhall be drawn, ſigned, and inrolled before the firſt Day after the *Michaelmas* or *Eaſter* Term next enſuing the pronouncing of it. *Ord. per Cla. Rules and Orders of Chancery* 116, *Vide Practical Regiſter in Chancery* 123.

And ſhall not be afterwards ſigned and inrolled, without Leave of the Court. *Ord. per Cla. Rules and Orders of Chancery* 116, 117. *Vide Practical Regiſter in Chancery* 124.

[A Caveat may be entered againſt inrolling a Decree without aſſigning Reaſon, which ſtops it for a Month. *Anon. M.* 1749. 1 *Vezey* 326.]

[The Court will vacate the Inrolment of a Decree, tho' ſtrictly regular, if it is extremely quick, and it appears the other Party intended to enter Caveat but came too late by miſtaking the Place. Thus Courts of Law ſet aſide Judgments, *as on Surprize*, tho' ſtrictly regular. *Ibid.*]

[The Court never ſuffers a Decree *to Account* to be ſigned and inrolled, becauſe it would tie up their Hands if there ſhould be any Defect in the Directions. *Staunton* v. *Oldham*, *T.* 1742. 2 *Atkyns* 383.]

So in the *Exchequer*, a Decree of Diſmiſſion, ſhall not be entred after the laſt Day of the next Term, without Leave of the Court, upon Motion. *Rules and Orders in Exchequer* 12. *Rule* 31.

In *Chancery*, it may be inrolled after the Death of the Defendant. 2 *Ca. Ch.* 227.

So, if a Guardian is decreed to pay Money, having confeſſed Aſſets, he ſhall be bound, tho' the Infant dies before the Inrolment. 2 *Ca. Ch.* 199.

If the Decree concerns Land, or a Leaſe, it ſhall be entred in the Docket of the Regiſter, within ſix Months; otherwiſe a Purchaſer ſhall not be prejudiced by it. *Vide Practical Regiſter in Chancery* 128.

It ought to recite the Facts, which are agreed, or proved; otherwiſe a Bill of Review would be prevented. 1 *Ver.* 214.

If a Decree be for Relief againſt a Judgment in another Court, the Judgment ſhall firſt be read, and then the Decree does not vacate the Judgment, but corrects the unreaſonable Part. *Vide Poſt*, (3 W.) *Vide Practical Regiſter in Chancery* 127, 8.

[In a ſecond Cauſe between the ſame Parties, the Court will not make an inconſiſtent Decree, becauſe it would create Confuſion; but will direct the Cauſe to ſtand over, that Plainiff may lay the Matter before the Court, by Bill of Review or otherwiſe. *Shepherd* v. *Titley*, *T.* 1742. 2 *Atkyns* 348.]

[Acquieſcence under a Decree of Diſmiſſion in a former Cauſe may be inſiſted on, unleſs it was *without Prejudice* to the preſent Queſtion. *Ibid.*

[If a Bill is brought, and Decree made in *Wales*, and an Appeal to the Lords who affirm, and Defendant to avoid Execution flies into *England*, an original Decree may be had here on a Bill ſtating all the Facts. *Semb. Morgan* v. —— *M.* 1737. 1 *Atkyns* 408.]

[If any Matter is reserved at the Hearing till after the Master's Report, the Court will not determine it on Motion, but it must be set down on the Equity reserved. *Cooke* v. *Gwyn*, *M.* 1748. 3 *Atkyns* 689.

[But it will grant a Receiver on Motion, notwithstanding such Reservation. *Ibid.*]

[If Plaintiff is intitled to Relief against Defendants *A.* and *B.* and *A.* is decreed to pay Plaintiff, the Court will give *A.* leave to prosecute the Decree against *B.* *Walker* v. *Preswick*, *T.* 1755. 2 *Vezey* 622.]

[In a suit where the Attorney-General, a Party, leaves it to the Court to make a Decree, so as not to prejudice the Rights of the Crown, the Court will decree with a *Salvo Jure* to the Crown, and also give Leave to the Parties to resort back, if the Execution is by Act or Right of the Crown obstructed. *Penn* v. *Ld. Baltimore*, *P.* 1750. 1 *Vezey* 444.]

[When a Cause comes on after the *Postea* returned, upon the Equity reserved, the Decree is always absolute. *Geale* v. *Winter*, *in Sc. P.* 1719. *Bunb.* 40.]

If a Decree be by the Consent of Counsel, and no other Cause appears for it, it shall be reversed; for Consent of Counsel is not sufficient Ground for a Decree. 1 *Ver.* 274.

By a Privy Seal, the Chancellor, or Keeper may sign and inrol a Decree of his Predecessor. 1 *Ver.* 132.

(Y. 2.) Who are bound by a Decree.

All Parties, and Privies are bound by a Decree.

So, a Purchaser after the Decree. *Ca. Ch.* 231. 1 *Ver.* 459.

So, a Purchaser *pendente lite*. *Ca. Ch.* 152. 1 *Ver.* 459, 460.

So, a Decree for Foreclosure of a Redemption against a Tenant in Tail binds his Issue. *Ca. Ch.* 220.

So it binds the Remainder-Man, who claims by a voluntary Settlement of the Tenant in Tail, altho' no Party to the Decree. *Semb. Ca. Ch.* 220.

So, if a Person, present at the pronouncing of a Decree, pays Money to an Executor contrary to the Decree, tho' he was no Party to the Suit, nor served with an Order for the Non-payment, he shall be bound by the Decree. *R.* 1 *Ver.* 57, 123.

So, if four Parishioners are named to defend for all, and there is a Decree against them; another Parishioner, not Party or Privy to those four Defendants, shall be bound by the Decree. *Ca. Ch.* 272, 282.

If the Lord of a Manor is decreed to admit Copyholders upon a Fine certain; a Copyholder, not a Party, shall take Advantage of the Decree. *Hard.* 169.

(Y 3.) Who not.

But a Purchaser *bonâ fide* before the Bill exhibited, not being a Party by the Bill, nor by Order, shall not be bound by the Decree. *Vide Practical Register in Chancery* 125, 6.

Nor any one, who does not appear *gratis*, nor was served with Process *ad audiendum Judicium*. *Vide Practical Register in Chancery* 125.

Nor any one, who has an Interest, and is not Party, or Privy. *R. Ca. Ch.* 48.

[Copyholders in Fee, or Freeholders for Life, not Parties, are not bound by a Decree against the Lord of the Manor. *Poore* v. *Clerk*, *H.* 1742. 2 *Atkyns* 515.]

So, if one Defendant is in Contempt to a Sequestration, and a Decree is made against other Defendants; that does not bind the Defendant in Contempt but he may afterwards appear, and answer, and have the Cause heard. 1 *Ver.* 228.

A Decree in *Chancery* does not bind the Right, but only the Person. *Vide Ante*, (D. 7.) *Vide Ca. Ch.* 301.

(Y. 4.) Execution of a Decree.

After a Decree made, the Defendant ought to be served with it, under the Seal of the Court.

And

And in the *Exchequer*, No Perſon ſhall be in Contempt, for not performing an Order or Decree, until he is ſerved by Delivery of a true Copy to him, and ſhewing him the Order or Decree under the Seal of the Court. *Rules and Orders in Exchequer* 14. *Rule* 35.

Or, if he cannot be found to be ſerved perſonally, upon an *Affidavit* thereof by Order of Court, a Writ of Execution may be left at his Houſe or laſt Abode, or a Copy ſhall be left with his Clerk in Court. *Rules and Orders in Exchequer*, 14. *Rule* 35.

In *Chancery*, if the Defendant, being ſerved with the Decree, does not pay Obedience to it, all the Proceſs for Contempt ſhall iſſue againſt him ſucceſſively. *Vide* what they are, *Ante*, (D. 3. &c.) *Vide Practical Regiſter in Chancery* 174.

[If Defendant is in Cuſtody on an Attachment, Sequeſtration ſhall not iſſue till Return of Attachment, and then if he does not obey it, may iſſue againſt his Land and Goods, tho' his Body is in Cuſtody. *Martin* v. *Kerridge*, *H.* 1733. 3 *P. W.* 240.]

[Cattle ſequeſtred may not be ſold till the Commiſſion returned, and then a *Venditioni exponas* for the Cattle, and a new Sequeſtration for the Remainder of the Debt. *Yarroth* v. *Seys*, *P.* 1720. *Bunb.* 62.]

[On Affidavit of Oppoſition to Sequeſtrators, a Writ of Aſſiſtance ſhall be granted. *Granſlade* v. *Baker*, *T.* 10 *G.* *Bunb.* 168.]

[A Sequeſtration muſt be returned before it ſhall be diſcharged on Motion on the Death of the Party. *Anon. in Sc. M.* 1718. *Bunb.* 31.]

[There is no abſolute ſtated Fee for a Sequeſtrator, it is diſcretionary. *Wood* v. *Freeman*, *P.* 1743. 2 *Atkyns* 542.

And a Sequeſtration may iſſue of an Eſtate Real or Perſonal, tho' the Decree be only for a perſonal Duty. *R. Ca. Ch.* 92, 242.

And the Sequeſtration ſhall be continued againſt the Heir, if the Defendant dies under it. *Ca. Ch.* 241, 2.

[If there is a Decree for Payment of Money, but not ſigned and inrolled, and a Sequeſtration for Non-performance, and Plaintiff dies, the Sequeſtration abates, and there muſt be a Bill of Revivor. *Wharam* v. *Broughton*, *M.* 1748. 1 *Vezey* 180.]

Tho' the Heir claims by a voluntary Settlement of his Father, with Power of Revocation, made before the Suit. *R. Ca. Ch.* 242.

Otherwiſe, if it was without Power of Revocation, (tho' voluntary. *R. Ca. Ch.* 242.

If the Defendant be taken by the Serjeant at Arms, or committed, he ſhall not be diſcharged, until he performs the Decree in all Things preſently to be performed, and gives Security for the Performance of the Parts to be performed *in futuro*. *Ord. per Cla.* *Rules and Orders of Chancery* 117. *Vide Practical Regiſter in Chancery* 175. — So, in the *Exchequer*. *Rules and Orders in Exchequer* 14. *Rule* 37.

And the Chancellor alſo may fine him for the Contempt, and eſtreat the Fine. *Vide Practical Regiſter in Chancery* 175.

And if he procures himſelf to be removed into *B. R.* and then eſcapes, he may be recommitted. *Ca. Ch.* 32.

If there is a General Pardon after Commitment, by which all Contempts are pardoned, he ſhall not be diſcharged. *Dub. Hard.* 192.

If the Decree is for Land, and the Defendant, being impriſoned, will not perform it, the Court grants an Injunction for the Poſſeſſion. *Vide Ante*, (D. 7.) *Vide Practical Regiſter in Chancery* 177.

And upon an *Affidavit* of Service, and that it is not obeyed, a Commiſſion ſhall be granted to Special Juſtices, and a Writ of Aſſiſtance directed to the Sheriff, if neceſſary, to put the Party into Poſſeſſion. *Vide Practical Regiſter in Chancery* 177. [*Stribley* v. *Hawkie*, *M.* 1744. 3 *Atkins* 275.]

If a Degree is *Quouſque*, or Temporary, and a Bond, or Aſſurance is alſo decreed for the Performance of it, and the Aſſurance is given abſolutely, yet it ſhall be guided by the Decree. *R. Ca Ch.* 251.

So, a Fine acknowledged, or a Recovery ſuffered purſuant to a Decree, ſhall be reſtrained of Operation beyond the Intent of the Decree. *R. Ca. Ch.* 49.

(Y. 5.) Re-hearing.

Vide Review. Ante (G.)

[The Decree muſt be made compleat againſt the Defendant, tho' he has made Default, before you can petition for a Rehearing. *Baxter* v. *Wilſon*, *H.* 1740. 2 *Atkyns* 152.]

[A Rehearing is not permitted, till the Decree is drawn up. *Croſſy* v. *Shadforth*, *H.* 1723. *Bunb.* 142.]

[The Court will grant a Rehearing, tho' the Parties have entred into an Order by Conſent to abide by the Decree, and not to appeal. *Buck* v. *Fawcett*, *H.* 1733. 3 *P. W.* 242.]

[A Decree by Conſent ſhall not be ſet aſide. *Harriſon* v. *Rumſey*, *T.* 1752. 2 *Vezey* 488.]

Before the Inrolment of a Decree, the Cauſe may be allowed to be reheard, for good Cauſe. *Vide Practical Regiſter in Chancery* 311.

As, if the Fact, or Proof, upon which the Decree is founded, be miſtaken. *Ca. Ch.* 54.

So, if there be any Omiſſion in the Inrolment of the Decree. 2 *Vent.* 359.

So, after an Inrolment irregularly made, or by Surprize. 1 *Ver.* 131, 132.

[If Plaintiff continues an Infant till near pronouncing the Decree, and his Solicitor has been groſly negligent, ſo that the Merits have not been heard, the Court will diſcharge the Inrolment of Decree, (on paying Coſts of the Day) and permit him to apply for Rehearing. *Kemp* v. *Squire*, *H.* 1748. 1 *Vezey* 205.]

But generally after an Inrolment a Rehearing ſhall not be allowed; for then the Decree is upon Record, which ought not to be vacated. 1 *Ver.* 131.

[No Rehearing ſhall be granted, unleſs applied for within ſix Months after the Decree. *Drake* v. *Hopkins*, *M.* 1731. *Bunb.* 309.]

So, by Order 12 *May* 2. *Jac.* 2. No Rehearing ſhall be granted, if the Party does not depoſit 5*l.* for Coſts, if he has no Relief. *Rules and Orders of Chancery* 167.*

**Vide Practical Regiſter in Chancery* 312. where the Depoſit is increaſed to 10*l.* and afterwards to 20*l.*

And by the ſame Order, a Rehearing does not ſtay Proceedings upon the Original Decree without ſpecial Order. *Rules and Orders of Chancery* 167.

So, by Order, 23 *Oct.* 1 *W. & M.* The Court ſhall be attended two Days before the Rehearing, with a Copy of the Decree, and Petition for Rehearing. *Rules and Orders of Chancery* 186.

[A Cauſe originally heard before the Chancellor, muſt be opened on Rehearing as a Caſe. *Anon.* *T.* 1740. 2 *Atkyns* 50.]

(Y. 6.) Decree inforced by an Original Bill.

A Man decreed to do ſuch an Act may have an Original Bill to inforce the doing of it; as, if a Mortgagee be decreed to account for Profits received before and ſince his Aſſignment, he ſhall have a Bill to inforce the Aſſignee to account for the Time ſince the Aſſignment. *Ca. Ch.* 3.

So, if a Decree be for the King, it may be inforced upon an Original Bill. *R.* 1 *Rol.* 373. *l.* 50.

So a Decree in an inferior Court of Equity may be inforced upon a Bill here. *R.* 1 *Rol.* 373. *l.* 30.

So after a Decree affirmed in Parliament, a Bill may be brought for the Diſcovery of a Deed imbeziled *pendente lite*, in Aid of the Decree, or for explaining of it. 1 *Ver.* 417.

So, if a Decree be for a ſpecial Purpoſe, or *Quouſque*, an Original Bill may be brought, to ſhew the Matter ſatisfied, or the Purpoſes performed. *R. Ca. Ch.* 251.

So, if the Decree be for aiding a defective Conveyance of Land, there may afterwards be an Original Bill againſt the Heir, for the meſne Profits. *R.* 2 *Ca. Ch.* 134, 72.

Tho' the Plaintiff by his firſt Bill had prayed an Account of the Profits. 2 *Ca. Ch.* 134. But this ſeems not to have been prayed. 2 *Ca. Ch.* 71, 72.

So

So an Original Bill for the Execution of a Decree, againſt a Purchaſer, who claimed under Parties to the Decree, was allowed upon Demurrer. 26 *Car.* 2. —*Ca. Ch.* 231.

So a Decree by Commiſſioners of charitable Uſes was confirmed by Original Bill. *C. Ch.* 193. *Vide Poſt*, (2 N. 1.)

[If *A.* conveys a real Eſtate for a Charity, then makes his Will and gives 3000*l.* (the exact Value of that Land) to the ſame Charity, and 250*l.* to the ſame, and gives the Eſtate to *C.* Wife of *B.* and to *D.* as Tenants in Common; and on a Bill brought for Settlement and Decree, and Directions to the Maſter to receive a Scheme, and he reports a Scheme for laying out the Money in Purchaſe of theſe Lands, and the 250*l.* in other Lands fit for the School, and Report confirmed and decreed that all ſhould be carried into Execution, *B.* and *C.* acquieſcing; *C.* ſurvives and dies; *D.* ſettles his Moiety on himſelf in tail, and dies, leaving an Infant Son; the Court will not inforce the Execution of the former Orders. *Attorney-general* v. *Day*, *H.* 1748. 1 *Vezey* 218.]

So, if there be an Original Bill for the Execution of a Decree, a *Parol* Agreement after the Decree cannot be pleaded in Bar, but the Party ought to inforce his Agreement by a new Bill, to which the other may give an Anſwer. *R.* 2 *Ca. Ch.* 8.

So a Decree may be revived by *Scire Facias*, after it is ſigned and inrolled, to be put in Execution. *Vide Practical Regiſter in Chancery* 351.

But a *Scire Facias* lies only for a Party or Privy; and therefore ſhall not be allowed for a Purchaſer or Aſſignee; for he wants Privity. 1 *Ver.* 426.

Yet a Defendant cannot plead in *Engliſh*, to a *Subpœna Scire Facias*, if he is not Privy, but ſhall apply to the Court by Motion. *Eq. R.* 234. *

[Tho' in general the Court only enforces, and does not vary, yet on Circumſtances it will conſider the Directions, and whether there was any Miſtake. *Weſt* v. *Skip*, *P.* 1749. 1 *Vezey* 239.]

* In the *Exchequer in Ireland.*

(Y. 7.) Or Avoided.

[An original Bill cannot be brought to affect or alter a Decree, unleſs obtained by Fraud; but if the Decree is ſigned and inroled, it muſt be by Bill of Review, if not, by Application to bring Supplemental Bill in Nature of a Bill of Review. *Wortley* v. *Berkhead*, *T.* 1754. 3 *Atkyns* 809.]

So a Decree, that a Mortgagee Account for Profits received before, and ſince his Aſſignment, was avoided by an Original Bill, ſhewing that the Aſſignee had a Title Paramount to the Mortgage. *Ca. Ch.* 3.

So a Decree abſolute for the Enjoyment of Land, upon Non-payment of Money due upon an Account, was avoided by an Original Bill, ſhewing the Neceſſity of the Non-payment, by Matter ſubſequent to the Decree. *Ca. Ch.* 64.

So a Decree obtained by Fraud may be avoided by Original Bill, by a Stranger, who may be admitted to falſify the Suggeſtions, upon which the Decree was founded. *Ca. Ch.* 152.

So a Decree for Alimony upon a Separation, affirmed upon a Bill of Review, and by the Houſe of Lords upon an Appeal, ſhall be diſannulled upon an Original Bill brought by the Huſband, who tenders Co-habitation. *Eq. Ca.* 6.* *Vide Ca. Ch.* 250.

* 2d Part of 2 *Mod. Ca.*

So a Decree againſt an Infant may be avoided by Original Bill, during his Infancy, and a Rehearing, or a Review is not neceſſary; but it is proper to recite the Errors of the Decree in the Bill. *P. W.* 737.

But a Decree ſhall not be explained by an Original Bill, upon a Matter precedent to the Decree; as, if a Man has a Decree upon an Agreement to convey a Manor, being of 110*l. per Ann.* to which a Farm of 250*l. per Ann.* had fallen in, and then the Decree is made for the Conveyance *of the Manor*, generally, it ſhall not be explained by Original Bill, that it did not extend to the Farm. *R. Ca. Ch.* 45.

[If a Decree has been made to ſell a Truſt Eſtate for Payment of Debts before the Maſter to the beſt Purchaſer, and afterwards the Truſtees enter into Articles

with *A.* for it, and then ſcruple to convey, leſt it ſhould not be a Purſuance of the Decree; the Court will not compel them, but the Sale muſt be had before the Maſter under the Decree, and *A.* may purchaſe if he pleaſes. *Anneſley* v. *Aſburſt*, T. 1734. 3 *P. W.* 282.]

Nor ſhall there be a Bill to diſcover Aſſets, upon a Decree to pay Coſts out of the Aſſets, &c. 'till the Decree is ſigned, and inrolled. *Rl. Ch. R.* 33, 4.

(Z) Accident.

ACCIDENT, Fraud, and Truſt, are proper for Relief in *Chancery*. *Fran.* 27. *Vide Poſt*, 3 M. 1, &c.—4 W. 1, &c.)

If *A.* executes a Bond as Surety for *B.* but by Miſtake of the Writer, his Name is omitted in the Bond, the Obligee ſhall be relieved againſt *A.* in Equity. *R.* 3 *Ch. R.* 99.

[If a Deed granting a Rent-charge, or a Bond is loſt, a Bill may be brought for the Rent or Money, becauſe an Action at Law muſt be with a *Profert*, &c. *Anon.* P. 1720. 2 *Atkyns* 61.]

So, tho' the Party provides for Accidents, *Chancery* ſometimes relieves beyond the Proviſion of the Party; as, if an Attorney, who takes 120*l.* with a Clerk, agrees that 60*l.* ſhall be returned if he dies within a Year, and he dies within three Weeks; his Executor ſhall return 100 Guineas. 1 *Ver.* 460.

(2 A.) Account.

(2 A. 1.) When it ſhall be decreed.

CHANCERY will oblige any one to give an Account for Money by him received.

As, a Guardian, or any one, who receives Rents and Profits as Guardian. *Ca. Ch.* 126. 1 *Ver.* 296. *Vide Poſt*, (3 O. 1.)

A Woman, who receives Rents, &c. upon Pretence of a Deviſe, which appears afterwards to have been revoked. *Ca. Ch.* 126.

An Executor, or Adminiſtrator, who receives the Perſonal Eſtate of a Deceaſed; Tho' the Teſtator ſays, that the Executor ſhall diſtribute the Reſidue to ſuch and ſuch Perſons, without Compulſion, and all of them acquieſce, except one. *R.* 2 *Ca. Ch.* 198.

A Man, who enters without Title, where the Entry of the Plaintiff was prevented by a Leaſe *in eſſe*. *Ch. R.* 285.

If he enters by Title, to receive ſuch Part of the Profits, and receives the Whole, he ſhall account for the Overplus. *Eq. Ca.* 32.

[On a Bill to redeem, where the Mortgagee has been in Poſſeſſion 37 Years, and has received more then the Value on it, and has kept the Accounts intermixed with thoſe of his own Eſtate, the Court will decree him to account, and afterwards order all Books, Papers, &c. relating to the Account, to be produced on Oath. *Dean* v. *North*, M. 1730. *Bunb.* 288.]

[If a Man brings Bill, praying that a Deed may be produced at the Trial of an Ejectment which he has brought againſt Defendant, and delivered up for Plaintiff's Benefit, and for Relief generally, and an Affidavit is annexed of the Want of the Deed, and it appears Plaintiff could not come at the Deed without the Aſſiſtance of this Court, and that he had an equitable Title only, there being a Term of Years in Truſtees which this Court removes, and Plaintiff recovers in Ejectment, this Court will decree an Account of Rents and Profits from the Time Plaintiff's Title accrued, tho' the Bill does not charge that Defendant was in Poſſeſſion. *Dormer* v. *Forteſcue*, P. 1744. 3 *Atkyns* 124.]

[If a Share in the *New River* is ſettled on *A.* for Life, with Remainders over, and after his Death his Heir having the Settlement conceals it, and claims the Share, and levies a Fine of it, he ſhall account for the Profits from the Time the Title accrued. *Ld. Townſhend* v. *Windham Alb.* P. 1745. 3 *Atkyns* 336.]

A. receives

A. receives Pay for a Company, he ſhall account to the Captain for the Whole, not for the Perſonal Pay of himſelf and Servants only. *R.* 2 *Ver.* 682.

So a Factor Agent, *&c.* ſhall be accountable to his Principal. 2 *Ca. Ch.* 112.

So an Account ſhall be demanded in *Chancery*, againſt the Executors of a Guardian, with an Averment of Aſſets, tho' they are not Privies. *R. upon Demurrer*, *Carey* 54.

Or, by an Executor, or Adminiſtrator. 1 *Ch. R.* 261.

So againſt an Executor of an Executor, who was guilty of a *Devaſtavit*. *Stnb. Ca. Ch.* 303. *Ch. R.* 39.

So, againſt Executors of Feoffees to a Uſe, before the Statute 27 *H.* 8. 4 *Inſt.* 87.

And againſt Executors, or Adminiſtrators of a Truſtee. *R.* 4 *Inſt.* 86, 7.

So an Account ſhall be demanded againſt a Leſſee, where the Leſſor covenants to allow his Part of Law-Suits. *Ch. R.* 235.

So, againſt an Adminiſtrator, after his Adminiſtration repealed, and granted to another. *R. Ch. R.* 40.

[A Creditor of a Partner deceaſed, may bring a Bill againſt the ſurviving Partner, as well as againſt the Repreſentative of the Deceaſed; and this tho' the Repreſentative has already brought Bill for an Account againſt the Survivor. *Newland* v. *Champion*, *T.* 1748. 1 *Vezey* 105.]

So, againſt a Factor, for himſelf and his Co-factor, now dead, tho' his Executor is accountable. *Eq. Abr.* 5.

Or, againſt the Executor or Adminiſtrator of an Apprentice employed as a Factor. *Eq. Abr.* 6.

So there ſhall be an Account by one Joint-tenant, Parcener, *&c.* againſt the others. 1 *Ch. R.* 49. *Vide Poſt.* (3 V. 6.)

So an Account ſhall be demanded, by a Legatee, againſt an Executor of an Executor of the Teſtator, altho' a Co-executor of the firſt Teſtator be living upon a Suggeſtion that Goods came to his Hands; for every one, who has Goods of a Teſtator, is accountable to a Legatee. *R. upon Demurrer*, *Ca. Ch.* 57.

[If a Truſtee to whom Rents and Profits are deviſed, has Notice thereof, and does not renounce, but receives them, he ſhall account to the Claimants under the Will, tho' he pretends he received them not as Truſtee, but for the Son and Heir at Law as his Factor, and accounted to him. *Conyngham* v. *Conyngham*, *T.* 1750. 1 *Vezey* 522.]

So there ſhall be an Account in Equity for meſne Profits. 1 *Ch. R.* 48.

So every Truſtee is accountable to the *Ceſtuy que Truſt*.

[A Truſtee, named Executor, not proving, but Power reſerved, and Money coming to his Hands, may be decreed to account, but not as Executor, and ſhall have proper Allowances before the Maſter. *Moore* v. *Moore*, *T.* 1755. 2 *Vezey* 596.]

So, if the Truſtee employ *A.* as his Servant, *A.* ſhall be accountable to the *Ceſtuy que Truſt*. *R.* 2 *Ca. Ch.* 121.

Altho' *A.* had accounted to the Truſtee himſelf in his Life-time. *R.* 2 *Ca. Ch.* 121.

So, if an Infant, who uſed to receive Money from *B.* by the Order of his Guardian, after full Age receives Money by Order of the ſame Guardian from *B.* and then accounts with the Guardian, but does not put thoſe Sums into the Account, and there are General Releaſes between them, he ſhall be accountable to *B.* for thoſe Sums. *R. Ca. Parl.* 17.

So *A.* ſhall account as Bailiff to *B.* tho' *B.* ſeizes his Papers, but afterwards reſtores them. *R.* 2 *Ver.* 33.

So there ſhall be an Account in Equity, where there are mutual Debts, tho' one is upon Bond, and the other upon ſimple Contract, and 18 Years are paſſed; for a Diſcount is natural Juſtice, *Abr. Ca.* 8. altho' the Diſcount is againſt an Executor, or an Aſſignee of a Commiſſion of Bankrupt. *Abr. Ca.* 8. *Vide* 2 *Ver.* 428.

[If Plaintiff claims as a Creditor under Articles, and alſo as a Legatee under a Will, and the Legacy is ſo large as to cover the whole perſonal Eſtate, the Court will direct an Account to be taken of Teſtator's perſonal Eſtate, at the Time of making

making the Will, and at the Time of his Death, in order to judge whether Plaintiff ſhall take under both Articles and Will. *King* v. *Phillips*, *P.* 1749. 1 *Vezey* 232.]

[If a Man cohabits with a Woman, and receives her Rents, and they make Agreement that he ſhall leave her by his Will as much as he receives of her Eſtate, deducting what ſhe is indebted to him, the Account ſhall be taken immediately, tho' the Payment is in future. *Rattray* v. *Darley*, *T.* 1752. 2 *Vezey* 424.]

[If Money is over-paid in purſuance of an uſurious Contract, the Court will decree it to be accounted for, notwithſtanding the Agreement of the oppreſſed Party to allow ſuch Payments. *Boſanquett* v. *Daſhwood*, *M.* 8 *G.* 2. *C. T. T.* 38.]

[If Defendant acknowledges any particular Sum due, tho' he ſwears that thoſe Sums are diſcharged, it is Ground for directing an Account. *Brace* v. *Taylor*, *H.* 1741. 2 *Atkyns* 253.]

[The Court will direct an Account after a very great Length of Time, if no Preſumption of Satisfaction ariſes from it, and if Plaintiff's Right was not fully diſcloſed to him in due Time. *E. Pomfret* v. *Ld. Windſor*, *T.* 1752. 2 *Vezey* 472.]

[Eſpecially, if it is in Part for the Execution of a Truſt of real Eſtate, tho' when executed it will become perſonal. *Ibid.*]

[If a Perſon has offered by Letters or Meſſuages to account, or to refer, an Account ſhall be decreed, notwithſtanding the Statute of Limitations. *Ibid.*]

(2 A. 2.) When not.

[Where an Account has been ſtated, unleſs particular Errors are aſſigned. *Dawſon* v. *Dawſon*, *M.* 1737. 1 *Atkyns* 1.]

A Purchaſer of the Land of a Delinquent (againſt whom he had a Judgment, which was allowed in the Purchaſe) ſhall not be compelled to account for the Profits; for they are pardoned by the Act of Oblivion. *R. Ca. Ch.* 172, 3.

[The Court will not decree an Account of Rents and Profits of an Eſtate, where Poſſeſſion has not been recovered, as Treſpaſs will not lie at Law for them till then. *Norton* v. *Frecker*, *H.* 1737. 1 *Atkyns* 524.]

[Nor of Rents received by the original Debtor and Owner of the Eſtate, *pendente lite*, from the filing of the Bill, even where a fraudulent Conveyance has been ſet up and removed in Favour of Judgment Creditors. *Higgins* v. *York-buildings Company*, *M.* 1740. 2 *Atkyns* 107.]

[Nor againſt a Mortgagor left in Poſſeſſion, in Favour of a Mortgagee. *Ibid.*]

[An Account of the Profits of Coals dug cannot be decreed unleſs Plaintiff ſhews Poſſeſſion; if he has not had Poſſeſſion he muſt aſcertain his Right by Ejectment, and then may have Account, and if the Bill is for ſettling Boundaries alſo, the Court will retain it till after Ejectment, otherwiſe will diſmiſs it. *Sayer* v. *Pierce*, *P.* 1749, 1 *Vezey* 232.]

Nor ſhall an Executor of a Creditor, who recovers againſt a Bankrupt, and converts the Goods before the Bankruptcy is known, be obliged to account with the other Creditors, as if his Teſtator had made a *Devaſtavit*; for his Teſtator was in the Nature of a Purchaſer. *Ca. Ch.* 303.

[The Court will not order an Account between two Merchants, Partners 24 Years ago. *Bridges* v. *Mitchel*, *T.* 1726. *Bunb.* 217.]

Nor ſhall an Executor of a Merchant account to another Merchant, who is accountable for ſo much to him in another Buſineſs; for all Accounts between Merchants, by Cuſtom, are evened by Way of Eſtoppel. *D.* 2 *Ca. Ch.* 7.

[The Court will not order an Account between the Executor of a Houſe Steward and the Executor of his Maſter, when many Years are elapſed between their Deaths without Demand made. *Lacon* v. *Briggs*, *T.* 1744. 3 *Atkyns* 105.]

A Counſellor ſhall not have an Account againſt a Solicitor for Fees. *R. upon Demurrer*, 1 *Ch. R.* 38.

[If two Parſons (as the Regiſters of the Prerogative) do not agree in appointing a Clerk, and the Deputy does appoint one, who acts and takes the Fees, he is the Officer *de facto*, and intitled to the Fees, and the Court will not order him to account. *Seymour* v. *Bennet*, *M.* 1742. 2 *Atkyns* 482.]

So, if *A.* enters and takes the Profits of Land for his Life, his Executor ſhall not account to him who claims the Eſtate, where there was no Truſt, or Infancy in the Caſe, and no Entry by him who claimed the Right. *R.* 2 *Ver.* 724.

So *A.* ſhall not account for Profits, not received for an Infant, or as a Truſtee, or when there is no Entry upon the Eſtate by another. *Eq. Abr.* 7.

And if a Man covenants to ſecure 500*l.* and afterwards pays Part of the Money, he ſhall not be obliged to give Security for the Money due upon the Account, before the Account ſtated. *R. Ca. Ch.* 294.

So, if a Bill is brought by an Infant, for an Account of Profits of Land, recovered againſt him by a Verdict, he ſhall not have an Account, 'till he has eſtabliſhed his Title at Law, *R.* 1 *Ver.* 295.

So, *Detainer of Charters, or Writings*, is a Plea in Bar of an Account. 2 *Ver.* 33.

So an Infant ſhall not be compelled to account upon a Contract, or for Goods for his Trade, or as Bailiff, altho' he is Factor for another. *Abr. Ca.* 6.

If a Receiver, appointed by a Guardian or a Truſtee, has accounted to him, he ſhall not account, at the full Age of the Infant, to him. *R. Pr. Cha.* 535.

So, if the *Royal Exchange Aſſurance*, or other Company, lend to a Director, or other Perſon, who hath Stock in the Company, Money upon Intereſt, the Company, without an Agreement or By-Law which ſubjects the Stock to ſuch Debt, cannot diſcount their Debt, or refuſe Transfer of the Stock 'till their Debt is paid. *R. Abr. Ca.* 9.

So a Lord of a Manor cannot refuſe his Copyholder, to ſurrender to another, 'till his own Debt is paid. *Abr. Ca.* 9.

[If a Father Adminiſtrator *durante minore ætate* of his Daughter, Executrix and reſiduary Legatee of her Grandmother, agrees on her Marriage to give her 800*l.* which is called a *Portion*, and in Conſideration of Love and Affection, and it is admitted that the Reſidue of the Grandmother did not exceed 500*l.* the 800*l.* ſhall be deemed a Satisfaction for it, and his Repreſentative ſhall not account for it, tho' he died worth 8000*l.* and left only a Son and this Daughter. *Wood* v. *Briant*, *H.* 1742. 2 *Atkyns* 521.]

[After the Death of Huſband and Wife, her Repreſentatives ſhall not account for Money received during Coverture, whether ſhe had ſeparate Eſtate or not, unleſs a ſpecial Caſe is made. *Peacock* v. *Monk*, *H.* 1750. 2 *Vezey* 190.]

[Nor ſhall Truſtee of Part of perſonal Eſtate be called on to account by a particular pecuniary Legatee; he muſt account to the Executor. *Moore* v. *Moore*, *T.* 1755. 2 *Vezey* 596.]

(2 A. 3.) Account ſtated.

So after an Account ſtated, a Man ſhall be obliged to give an Account *de novo*, upon ſhewing Particulars, in which the Account was miſtaken.

So, after an Account ſtated, with the Teſtator, and a Bond given for the Balance, upon Allegation that 200*l.* paid and entred in his Books, (which he had not at the Time of the Account,) was not allowed, the Executor was compelled to anſwer, with a Rule not to proceed further, without Leave of the Court. *R. upon a Plea of an Account ſtated*, *Ca. Ch.* 262.

So, after an Account ſettled before a Maſter between a Mortgagor and Mortgagee, upon Allegation by a ſecond Mortgagee, that it was done by Colluſion between them, and ſhewing the Particulars miſtated, the firſt Mortgagee ſhall be compelled to give an Account *de novo*. *Semb. Ca. Ch.* 299.

So, when no Particulars are ſhewn, the Defendant ſhall anſwer to the Colluſion. *Semb. Ca. Ch.* 299.

So, after an Account ſtated upon a Treaty of Marriage, by the Guardian of the Wife, to the Huſband, and the Balance paid, and a Bond given by the Huſband, to give a Releaſe of all Accounts after the Marriage, the Guardian, before the Releaſe executed, may be compelled to give an Account *de novo* after the Marriage. 2 *Ca. Ch.* 158.

So after an Account given of an Orphan's Eſtate before the Aldermen of *London*,

dor, an Account *de novo* ſhall be compelled to be made in *Chancery*. *R. upon a Plea*, 2 *Ca. Ch.* 170.

So, after an Account ſtated between a Mortgagor, and the Heir of the Mortgagee, upon Proof, that it was agreed, that the Account ſhould be reviewed, if there was any Miſtake, and that Intereſt upon Intereſt was computed, a new Account *ab origine* was decreed. *Ca. Ch.* 55. 3 *Ch. R.* 18.

So, after an Account between Partners, and a Note given for the Balance, where it was by Surprize, *&c.* *Ch. R.* 431.

Or, if it appears to the Court, from the Nature of the Account, that Intereſt upon Intereſt was computed. 3 *Ch. R.* 18.

So, after an Account ſtated, and a Releaſe given. *Skin.* 148.

[A Dividend made between the Parties is not ſufficient to ſupport a ſtated Account. *Dawſon* v. *Dawſon*, *M.* 1737. 1 *Atkyns* 1.]

[When Defendant ſets forth a ſtated Account, he ſhall not be obliged to go on upon a general one, for a ſtated Account may unravel what would remain confuſed on a general one. *Sumner* v. *Thorpe*, *H.* 1736. 2 *Atkyns* 1.]

[If a Bill is brought for a general Account, and Defendant ſets forth a ſtated one, Plaintiff muſt amend and pay Coſts of the Day only. *Ibid.*]

[If there are only Miſtakes and Omiſſions in the ſtated Account, the Party objecting ſhall only ſurcharge and falſify; if Fraud appears, the Whole ſhall be opened tho' of 23 Years ſtanding, and the fraudulent Perſon dead. *Vernon* v. *Vawdry*, *H.* 1740. 2 *Atkyns* 119.]

[Where Parties have mutual Dealings, it is not neceſſary that the Account ſhould be ſigned, to make it a ſtated Account, but only that the Perſon to whom it is ſent, keeps it a Length of Time without making Objection. *Willis* v. *Jernegan*, *H.* 1741. 2 *Atkyns* 251.]

[The Delivery of Vouchers, is an Affirmation that it is a ſtated Account, but it is not neceſſary in order to make it one. *Ibid.*]

[If a Man aged 30, intitled as the Son of a Freeman, and alſo to the Orphanage Share of his Siſter who died an Infant, ſtates an Account with his Mother the Executrix, it ſhall not be unravelled, but the Parties ſhall be at Liberty to ſurcharge and falſify. *Coomes* v. *Elling*, *H.* 1747. 3 *Atkyns* 676.]

[If pending Suit, Parties come to Compoſition, it ſhall not be ſet aſide on new Diſcovery, becauſe there is no particular Account by *Items*. If a minute ſtrict Account is entred into, it may be otherwiſe on new Diſcovery. *Sewell* v. *Bridge*, *T.* 1749. 1 *Vezey* 297.]

[After an Account ſtated, if Leave is given to ſurcharge and falſify, the *Onus Probandi*, lies on the Party having that Liberty; and if the Account was between Perſons of great and equal Abilities, the Evidence muſt be ſtrong to make any Alteration. *Pit* v. *Cholmondeley*, *T.* 1754. 2 *Vezey* 565.]

So, after an Account in the Spiritual Court, and a Decree thereupon. *R.* 2 *Ver.* 47.

So, after an Account with the Mortgagor, and a Decree for Foreclоſure, *A.* who would redeem, by a ſubſequent Mortgage, *&c.* ſhall have an Account *de novo*; and the former Account is no Bar. *R.* 2 *Ver.* 663.

But if a Man would compel an Account *de novo*, after an Account ſtated, he ought to ſhew in what Particulars it is miſtaken. *Ca. Ch.* 299. 1 *Ver.* 180.

And after an Account ſtated and reſted on for a long Time (as 14 Years) without Exception, the Accountant ſhall not be obliged to give an Account *de novo*. *Ca. Ch.* 127.

So, after 7 Years. *Ch. R.* 66.

[A Bill may be brought for Errors in an Account, much more than four Years after it is ſettled. *Roberts* v. *Kuffin*, *M.* 1740. 2 *Atkyns* 112.]

So, if the Mortgagee employs a Servant of the Mortgagor to receive the Profits, and after the Death of the Mortgagee, the Mortgagor accounts with his Executor, takes the Accounts of the Executor, and agrees by Writing, that he will not charge him for ſo much, as his own Servant received, he ſhall not afterwards compel the Executor to account. *R. upon a Plea*, *Ch. R.* 5.

So if a Man buys Goods, ſold by the Sheriff, upon an Execution at the Suit of *B.* againſt *C.* where they were offered to *B.* at the ſame Price and refuſed, it ſhall be a good Plea in Bar, to an Account. *Eq. Abr.* 11.

So

So an Account between Partners ſhall be taken only from the laſt Balance made. *Ch. R.* 190.

If no Balance, from the Commencement of the Partnerſhip. *Ibid.*

So an Account of the Voyage of a Ship, ſettled by the major Part of the Part-Owners, binds the Reſt. 1 *Ver.* 465. *Vide Poſt*, (2 A. 7.)

So an Account between Merchants, where no Objection was made, after the Trade between them ceaſed, until one of them died, ſhall be regarded, and the Parties ſent to Law. *R.* 2 *Ver.* 276.

If no Objection is made by a Merchant for two or three Poſts, after an Account received, it imports an Allowance of the Account. *Per Hutchins*, 2 *Ver.* 276.

[If a Merchant ſends an Account current to another in a different Country, on which a Balance is made due to himſelf, and the other keeps it two Years without Objection, it ſhall be conſidered as a ſtated Account. *Tickel* v. *Short*, *H.* 1750. 2 *Vzey* 239.]

So an Account upon a Decree, for a Tenant for Life, againſt his Truſtees, before the Birth of a Son in the Remainder, binds the Son. *R.* 2 *Ver.* 527.

So, if an Account is decreed againſt an Executor, and is ſettled and perfected and acquieſced in for many Years, the Executor ſhall not have an Account for a Debt due to himſelf. 2 *P. W.* 665.

[If there is an Account ſtated between a Minor juſt come of Age and his Solicitor, for Compoſition of a Cauſe, the Court favouring ſuch Compoſitions will not over-haul it. *Brown* v. *Pring*, *H.* 1749. 1 *Vezey* 407.]

[But Accounts ſtated between them, where there are *Items* "For all Law "Charges—What you pleaſe.—"For Bill of Fees and Diſburſements," (when none ſuch had been delivered;) "For Riſk run in Money laid out," (when no Riſk run, and Money improperly laid out;) all ſuch ſhall be ſet aſide, and a general Account directed. *Ibid.*]

(2 A. 4.) The Manner of the Account.

[If one of the Parties appears to be a weak Man, and eaſily induced to ſay any Thing, tho' untrue and againſt his own Intereſt, the Court will order that the Maſter ſhall examine him in Perſon, and ſee that no Advantage be taken of his Weakneſs. *Piddock* v. *Brown*, *T.* 1734. 3 *P. W.* 288.]

[A Party who is at Liberty to ſurcharge and falſify, is not confined to Errors in Fact, but may take Advantage of Errors in Law. *Roberts* v. *Kuffin*, *M.* 1740. 2 *Atkyns* 112.]

(2 A. 4.) What Allowance an Accountant ſhall have; and what not.

The Accountant ſhall be allowed, upon his Oath, all Sums expended under 40 *s.* 2 *Ca. Ch.* 249.

[The Accountant muſt ſwear peremptorily to Sums under 40 *s.* his Belief is not ſufficient. *Robinſon* v. *Cumming*, *T.* 1742. 2 *Atkyns* 409.]

If he mentions in his *Affidavit*, To whom, and when paid. 1 *Ver.* 283, 470. If the Whole do not exceed 100 *l.* 1 *Ver.* 470.

But other Sums, *&c.* he ſhall not be allowed, without Proof. *Semb.* 2 *Ca. Ch.* 12.

[If there is no poſitive Proof of Fraud, but only Circumſtances of Suſpicion, the Court will not order, no Sum to be allowed Defendant but what he ſhall produce Receipts for, or are proved by Witneſſes preſent at the Payment, but will only give Leave to ſurcharge and falſify. *Townſend* v. *Lowfield*, *T.* 1747. 3 *Atkyns* 536. 1 *Vezey* 35.]

[If Notes are found forged on an Iſſue directed, the Party whether ſuing in his own Right, or as Aſſignee, ſhall not be allowed to ſet up other Evidence. *Kemp* v. *Mackrell*, *T.* 1754. 2 *Vezey* 579.]

So if he loſes his Papers without his own Default, as by Seizure in a foreign Realm, *&c.* he ſhall not be charged, but upon his Oath, for Money gained by the Sale of his Merchandize. *R. Ca. Ch.* 128.

So Expences are allowed, upon Oath, that they were neceſſary. *Ch. R.* 119.

So Seeds, *&c.* ſold and delivered in his Trade to a Gardener, under 40 *s.* Value, ſhall be allowed upon his Oath, but not Trees ſold by the Gardener to the Seedſman. 2 *Ver.* 176.

In an Account by a Merchant againſt a Factor, he ſhall be allowed upon the Account all Cuſtoms ſaved from a foreign King. *R. Ca. Ch.* 25, 76.

Otherwiſe, of the Cuſtoms ſaved from our own King. *R. Ca. Ch.* 30.

So in an Account by an Infant againſt his Father-in-Law for a Legacy, he ſhall be allowed a Sum for putting him Apprentice, *&c.* 2 *Vent.* 353. *Eq. Abr.* 7.

But not for Maintenance, ſo as to diminiſh the Principal. *R.* 2 *Vent.* 353.

So a Truſtee for an Infant ſhall be allowed, upon Account, Money of which it is proved that he was robbed; and his Oath ſhall be allowed, as to the *Quantum* of which he was robbed. 2 *Ca. Ch.* 2.

If a Parcener, *&c.* avoids the Leaſe of his Anceſter, without the Privity of his Companion, he ſhall account for a Moiety of the Profits. 1 *Ch. R.* 49.

If there are three Part-Owners of a Ship, and two of them navigate the Ship againſt the Conſent of the other, and the Ship is loſt in the Voyage, he, who did not conſent, ſhall have an Account of the Profits, if there were any, and ſhall bear his Part of the Loſs. *R.* 1 *Ver.* 297.

A Truſtee ſhall be allowed a Salary, for a Bailiff for the Truſt Eſtate; but not for himſelf, if he manages it. 1 *Ver.* 316. *Eq. Abr.* 7.

So in an Account againſt *A.* by the Adminiſtrator of *B.* who had mutual Dealings with *A.* for a long Time, *A.* ſhall be allowed a Debt for Goods ſold by him to *B. R. Pr. Cha.* 582. So, for Diet given to *B. Eq. Abr.* 8.

If a Settlement be *for Default of Iſſue Male to Daughters, until* 3000 *l. is paid by* B. *in the Remainder*, in an Account to *B.* the Daughters ſhall be allowed Intereſt for the 3000 *l.* and the Rents ſhall not go in Diminution of the Principal, 'till a third Part is raiſed. *Eq. Abr.* 8.

[If a Father creates a Term, the Truſtees do not take Poſſeſſion, Heir at Law takes Poſſeſſion, and then purchaſes the Term, and is to account for Profits from a Year after being confirmed, and there is ſome Delay in making out the Title, and Lives fall in; the Court will direct him to account for Heriot's received, and Fines taken on letting the Eſtate. *Blount* v. *Blount*, *P.* 1748. 3 *Atkyns* 636.]

So in an Account to a Partner, the Defendant ſhall be allowed Money borrowed of him by the Plaintiff. *Eq. Abr.* 9.

But the *South-Sea Company* ſhall not be allowed Money borrowed of them, on a Bill to transfer Stock in the Company, if the Stock was not made a Security for the Payment. *Eq. Abr.* 9.

If *A.* accounts, he ſhall not have an Allowance for the Diet of the Plaintiff, who was his Relation, and came by his Invitation. 1 *Ver.* 19.

If an Executor accounts for Aſſets, he ſhall not be allowed a Judgment confeſſed *pendente lite*. 1 *Ver.* 457.

Nor, a Payment made *ſponte*, without Suit, *pendente lite*. 1 *Ver.* 369.

[In an Account of the Rents and Profits of a real Eſtate, the Court will order annual Reſts to be made, but not in an Account of perſonal Eſtate received by an Executor. *Robinſon* v. *Cumming*, *T.* 1742. 2 *Atkyns* 409.]

[If a Debtor whoſe Lands are extended by *elegit* comes here for Relief, the Creditor ſhall account for the Whole he has received, and not for the extended Value only; and the Debtor ſhall pay Intereſt tho' it exceed the Principal. *Godfrey* v. *Watſon*, *P.* 1747. 3 *Atkyns* 517.]

[So a Mortgagee who has tacked a Judgment to his Mortgage, ſhall be allowed Intereſt upon the Debt ſecured by the Judgment, tho' it exceeds the Penalty. *Ibid.*

[A Mortgagee in Poſſeſſion is not obliged to lay out Money, further than to keep the Eſtate in neceſſary Repair, but if he expends Money in Support of the Mortgagor's Title, when impeached, he may add it to the principal Debt, and it ſhall carry Intereſt. *Ibid.*]

[A Mortgagee ſhall not be allowed for his own Trouble in receiving Rents, but if the Eſtate lies at ſuch a Diſtance that he muſt have employed a Bailiff had it been his own, he ſhall be allowed what he paid the Bailiff. *Ibid.*]

[Tho' an Account againſt a Mortgagee or an Executor is decreed without future Words, yet he ſhall account for what he receives after the Decree. *Bulſtrode* v. *Bradley*, *M.* 1747. 3 *Atkyns* 582.]

[If

[If a long Time intervenes before filing the Bill, the Court will not (always) order it to be taken from the Time the Right accrued. *Rigden* v. *Vallier*, *H.* 1741. 3 *Atkyns* 731.]

[A Receiver appointed by this Court may diſtrain for Rent, without a particular Order, unleſs there is a Doubt who has the legal Right to the Rent. *Pitt* v. *Snowdon*, *H.* 1752. 3 *Atkyns* 750.]

[If two Parties employ an Attorney to ſettle a Matter in diſpute between them, and when it is intirely finiſhed voluntarily agree to give him 2000 *l.* apiece, and reſt on this for ſeveral Years, he ſhall be allowed his 4000 *l.* in Account; eſpecially if one of the Parties after Bill brought for Account, ratifies this Gift. *Oldham* v. *Hand*, *P.* 1751. 2 *Vezey* 259.]

[If on an Aſſignment or Purchaſe an Agent pays Money to the Aſſignee, and the Aſſignment is afterwards ſet aſide, the Agent ſhall be allowed the Sums paid. *Taylour* v. *Rochfort*, *P.* 1751. 2 *Vezey* 281.]

[The Depoſitions in a croſs Cauſe may be read on taking an Account directed in the original Cauſe, tho' the Croſs-bill be diſmiſſed. *Loubiere* v. *Genou*, *T.* 1754. 2 *Vezey* 579.]

(2 A. 5.) For what he ſhall not be charged.

A Man, who hath loſt his Papers, without his own Default, ſhall not be charged but upon his Oath. *R. Ca. Ch.* 128. Where the Papers, &c. were ſeized upon an Embargo in *Spain*.

So an Agent, Factor, &c. ſhall not be charged for Goods diſpoſed of according to his Orders. 2 *Ca. Ch.* 12.

Altho' not delivered accordingly, when the Omiſſion was by Accident, or without his Default. *Ibid.*

And it is ſufficient by his Anſwer to ſay generally, That all, by him received, was diſpoſed of according to the Order of his Maſter. 1 *Ver.* 136, 208.

Yet he ought to anſwer, for it is no Plea, That he paid to his Maſter. 1 *Ver.* 95, 136.

[If a Receiver is appointed, and the Owner of the Eſtate is in Poſſeſſion, the Parties ſhould apply to the Court to have Poſſeſſion delivered to the Receiver, who cannot diſtrain the Owner; and therefore, if Loſs happens he ſhall not be charged. *Griffith* v. *Griffith*, *T.* 1751. 2 *Vezey* 400.]

So a Man, charged to account for meſne Profits of Land, ſhall be charged only for ſo much as he hath received, or might have received, without his Default. *Semb.* 1 *Ver.* 44, 45.

If an Heir is decreed to account for Profits to a Purchaſer, he ſhall not be charged for that which was applied for Payment of the Debts of the Vendor, or received by the Purchaſer himſelf. *R. Ca. Ch.* 101.

A Woman, charged for the Profits of Land deviſed to her, which Deviſe was afterwards revoked, ſhall not be charged for Legacies deviſed out of the Land, paid before Notice of the Revocation. *R. Ca. Ch.* 126.

If Partners account, they ſhall not account for Debts compounded but according to the Compoſition. *Ch. R.* 191.

So after a long Time, &c. as 20 or 14 Years, an Accountant ſhall be diſcharged, upon his Oath, where Proof of Debts paid, &c. cannot be made by Bonds cancelled, &c. *Eq. Abr.* 11.

So a Truſtee ſhall not be charged, with the Value, which was only imaginary; for he ought to account only as a Bailiff. 1 *Ver.* 144.

So if Sequeſtrators fell Timber to the Value of 700 *l.* and pay only 200 *l.* to the Party, he ſhall not account for more; for the Sequeſtrators are the Agents of the Court, and not of the Party. 1 *Ver.* 160.

So a Defendant ſhall not be charged in his Account by the *Affidavit* of the Plaintiff. 1 *Ver.* 272.

So a Truſtee ſhall be charged for Money received by himſelf only, and not for Money received by his Co-truſtee, unleſs he joins in a Receipt for it. 1 *Ver.* 303.

So an Executor, who *bonâ fide* lends Money upon real Security, not ſuſpicious, but afterwards it is loſt, ſhall not account for the Loſs, tho' the Security was not taken with the Approbation of the Court. *Per Harcourt*, 1 *P. W.* 141.

[If a Receiver of an Eſtate under Order of this Court, in order to remit a conſiderable Sum to *London*, takes Bills of a Tradeſman of good Credit in the Country, who fails afterwards, he ſhall not make good the Loſs. *Knight* v. *E. Plymouth*, *P.* 1747. 3 *Atkyns* 480.]

So, where mutual Credit is given, as well as where there is a current Account, the one ſhall account to the other, or, if he be a Bankrupt, to the Aſſignees, only for the Balance. *Per Cowper*, 1 *P. W.* 326.

[If *A.* Tenant in Tail, lets a Leaſe to *B.* his Son, and afterwards becomes inſolvent and is diſcharged by the Statute, *B.* ſhall account from the Time of *A.*'s Diſcharge only. *Smith* v. *Cooke*, *T.* 1746. 3 *Atkyns* 378.]

(2 A. 6) For what he ſhall be charged.

An Accountant ſhall be charged for all Goods or Monies delivered to him, or his Order, or which came to his Uſe. 2 *Ca. Ch.* 12.

Altho' delivered according to his Inſtructions, if afterwards employed by his Order, or to his Uſe. *R.* 2 *Ca. Ch.* 12.

So, if the Delivery was to another Hand, if the Benefit afterwards came to his Uſe. 2 *Ca. Ch.* 12.

So he ſhall account for all received, or which he might have received, without his Default. 1 *Ver.* 44, 144. *Vide Poſt*, (4 A. 6.)

If an Executor or Truſtee makes Intereſt, he ſhall account for it, altho' he was not directed to place the Money out at Intereſt. 2 *Ver.* 548.

So a Factor ſhall account for himſelf and his Co-factor, now dead, tho' his Executor may be compelled to account. *Eq. Abr.* 5

If *B.* enters, and takes the Profits of an Eſtate of an Infant, and continues to receive them, for ſeveral Years after the Infant is of full Age, he ſhall account for all the Profits received after, as well as before his full Age. *Eq. Ab.* 7.

So, if *A.* and *B.* purchaſe in Moieties, and Incumbrances are to be paid out of the Purchaſe Money, and the Creditors abate Intereſt out of Friendſhip to *A.* and for his ſole Benefit, he ſhall account to *B.* for his Share of Abatement. *Eq. Abr.* 7.

If the Mate of a Ship, upon the Death of the Captain in the Voyage, takes the Money, of the Captain, intended for Traffick, and improves it by Trade; it is not ſufficient to repay it with Intereſt, but he ſhall account for his Improvement. *Per Harcourt*, 1 *P. W.* 140.

So a Man, who continues in Poſſeſſion of the Eſtate of an Infant, ſhall account to the Infant for the Profits, from the Time when his Title accrued, and not from the filing of the Bill only. 2 *P. W.* (645).

(2 A. 7.) When bound by an Account with another.

If Land is in Mortgage to *A.* and afterwards to *B.* and a Bill is brought by *A.* for Redemption, *B.* ſhall be bound by the Account between the Mortgagor and *A.* upon ſuch Bill. 2 *Ca. Ch.* 32. *R.* If Colluſion be denied. *Ca. Ch.* 299.

[On Bill brought by Huſband and Wife, an Account taken ſhall be binding on a contingent Remainder-man when his Title veſts. *Allen* v. *Papworth*, *M.* 1748. 1 *Vezey* 163.]

So, if Land is mortgaged to *A.* and afterwards ſettled for a Jointure, and then the Mortgagor becomes Bankrupt; the Account between the Mortgagee and the Aſſignees binds the Jointreſs; for the Aſſignees ſtand in the Place of the Mortgagor. *R.* 1 *Ver.* 179.

So an Account ſettled by the major Part of the Part-Owners of a Ship, binds the other Owners. 1 *Ver.* 465. *Vide Ante*, (2 A. 3.)

So, if a Book in which an Account is entered by the Defendant is produced to charge him, it ſhall be allowed for his Diſcharge. *Eq. Abr.* 10.

If a Defendant is charged only by his Account annext to the Anſwer, and upon Proofs in the Cauſe, nothing is diſproved, but a Matter, which might have been proved, is verified by Proof before a Maſter, the Defendant in other Particulars, ſhall be diſcharged by the ſame Account. *Eq. Abr.* 10.

So, if *D.* is charged only by his Oath, he ſhall be diſcharged by the ſame. *Ibid.*

But

But generally, an Account with *A.* does not bind *B.* (2 A. 8.)

So an Account by Workmen with the Government, did not bind the *D. of Marlborough* for the building of *Blenheim*. *Eq. Ca.* 26.* When not.

So an Account by *J. S.* with a Truſtee of a Truſt-Eſtate, who authorized him to manage it, does not bind the *Ceſtuy que Truſt*. *Eq. Abr.* 6. * 2d Part of 2 *Mod. Ca.*

Yet, if *A.* receives Money as Servant to *B.* and pays it to him, he ſhall not account afterwards to another Perſon, to whom *B.* is accountable, unleſs there is Colluſion between them, if he declare this by his Anſwer. *Ibid.*

And it is ſufficient to ſay generally, That all received by him, was received and diſpoſed of by the Order of his Maſter. *Ibid.*

(2 B.) Adminiſtrator.

(2 B. 1.) When he ſhall have Relief.

AN Adminiſtrator ſhall be relieved in *Chancery* againſt a Fraud to his Adminiſtration; as, if an Adminiſtration is wrongfully obtained, and afterwards repealed upon Citation, an Aſſignment of a Term in Truſt for himſelf, ſhall be revoked and avoided by the ſubſequent Adminiſtrator. *R.* 2 *Ca. Ch.* 129. *Vide Adminiſtrator, and Adminiſtration.* *Vide Poſt,* (3 G. 1.)

[If *A.* and *B.* are Adminiſtrators, and empower *C.* and *D.* Sons of *B.* to get in the Inteſtate's Effects, and *B.* without the Privity of *A.* ſettles an Account with them, receives the Balance, gives a Releaſe and dies, tho' this Releaſe being given to Perſons acting under the Letter of Attorney of both, and therefore accountable to them in their own Right, would be good in Law, yet Equity will ſet it aſide if it appear unfairly obtained. *Hudſon* v. *Hudſon*, *M.* 1737. 1 *Atkyns* 460.]

So an Adminiſtrator may exhibit a Bill for the Diſcovery of the Perſonal Eſtate of his Inteſtate.

Altho' there is a Suit in the Spiritual Court for revoking the Adminiſtration; for that is no Plea for the avoiding of a Diſcovery. *R.* 1 *Ver.* 106.

[If Adminiſtration is not taken out when the Bill is filed, and this is not objected to in the Anſwer, it is ſufficient if it is procured before Hearing. *Fell* v. *Lutwidge*, *H.* 1740. 2 *Atkyns* 120.]

(2 B. 2.) When there ſhall be Relief againſt him.

So upon a Bill by a Legatee, the Huſband Adminiſtrator *de bonis non, &c.* to his Wife, Executrix and Reſiduary Legatee *cum Teſtamento annexo*, ſhall be obliged to give Security for the Legacy, upon a Suggeſtion of his Inſolvency. *R.* 2 *Ver.* 249.

[If a Perſon in debt has aſſigned his Effects to one abroad, dies inteſtate, and the next of Kin applies for Adminiſtration, and is going to his uſual Reſidence out of the Juriſdiction of this Court, it will order him to give Security to abide the Decree to be made on Hearing. *Baker* v. *Dumareſque*, *M.* 1740. 2 *Atkyns* 66.]

But if an Executor or Adminiſtrator pays a Debt upon Bond to a Truſtee for himſelf, who had obtained Judgment; a Creditor ſhall not be aided againſt him. 2 *Ch. R.* 103.

Altho' the Bond was given to leave his Wife 1500*l.* at his Death, when her Portion was but 500*l.* *R.* 2 *Ch. R.* 103.

Altho' the whole Portion was not paid; but the Part not paid ſhall go in Satisfaction *pro tanto*. 2 *Ch. R.* 104

So, if an Adminiſtration is repealed and granted to another, and the prior Adminiſtrator has accounted in the Spiritual Court to the ſecond, and delivered to him all the Effects; he ſhall not afterwards be charged by Creditors of the Inteſtate, becauſe he had Goods of the Teſtator in his Hands, without an Account *de novo*. *R. Ch. R.* 123.

So, if there is a Settlement for a Jointure in Bar of all Share of the Huſband's Perſonal Eſtate, which the Wife may have by Cuſtom or otherwiſe, ſhe ſhall be barred

barred of the Share, which ſhe would have had by the Statute of Diſtribution, 22 & 23 *Car.* 2. if ſhe ſurvives her Huſband. *R. per Lord Nottingham, reverſed by Lord Guilford, and affirmed by Jefferys,* 1 *Ver.* 15. *Vide Poſt,* (2 M. 10.)

[An Adminiſtrator ſhall not be charged with Intereſt, on account of perſonal Eſtate in every Caſe; but if he has it long in his Hands, and Part is out at Intereſt, he ſhall. *Wilkins* v. *Hunt, H.* 1740. 2 *Atkyns* 151.]

[If *A.* and *B.* are Sureties with *C.* in an Adminiſtration Bond, and *C.* exhibits an Inventory, and *D.* a Creditor of Inteſtate by Bond brings Action againſt *C.* who pleads no Aſſets *ultra, &c.* and thereupon *D.* gets Aſſignment of Adminiſtration Bond, and brings three Actions againſt *A. B.* and *C.* for that *C.* had not exhibited a perfect Inventory, and no Defence being made has Judgment by Default; this Court will on a Bill for an Injunction order an Account only of what was exhibited upon the Inventory, and that the Verdict ſhall ſtand as a Security for ſo much as that ſhall fall ſhort of ſatisfying Defendant's Principal and Intereſt. *Greenſide* v. *Benſon, T.* 1745. 3 *Atkyns* 248.]

[A Solicitor in diſburſe for his Client, ſhall be paid out of a Duty decreed to his Adminiſtrator, and has a Lien upon it before the Bond-creditors of the Inteſtate. *Turwin* v. *Gibſon, T.* 1749. 3 *Atkyns* 720.]

(2 C) Agreement.

(2 C. 1.) When decreed.

(2 C. 1.) Upon Articles for the Aſſurance of Lands.

CHANCERY will inforce the Performance of an Agreement. As, if Articles are ſigned for the Conveyance of Lands for Money, and the Vendor afterwards refuſes, he ſhall be compelled to make ſuch Aſſurance as a Maſter ſhall approve. *R. Ch. R.* 20.

[If a real Eſtate is deviſed to Truſtees to ſell and pay Debts, *&c.* and the Reſidue to the Heir at Law, and *A.* agrees with one of the Truſtees to purchaſe, and enters on Part of the Premiſſes, the Court will compel him to compleat his Purchaſe, tho' the Will is not proved in Equity againſt the Heir who is abroad. *Colton* v. *Wilſon, T.* 1733. 3 *P. W.* 190.]

So, if the Articles are to make a Jointure, Leaſe, *&c. Vide Poſt,* (3 Z. 1.)

So, if Articles are to levy a Fine; a Fine ſhall be decreed *in Specie. R.* 2 *Mod.* 91.

So, if Articles are ſigned, tho' not ſealed, nor the Money paid.

So, if a Settlement upon the Siſter of *B.* by their Father, is acknowledged by the Mother and Guardian of *B.* and Poſſeſſion delivered, with a Covenant by the Mother upon her Marriage, that ſhe ſhall have the Lands to her and her Heirs, to which *B.* during his Nonage was a Witneſs: It ſhall be decreed, tho' there be no Proof of a Settlement by the Father. *Ca. Ch.* 47.

[If *A.* Tenant for Life, Remainder to his firſt, *&c.* Sons in Tail, Remainder to his right Heirs, and his two Sons *B.* and *C.* releaſe to Truſtees, to hold (as to Part) to the Uſe of *A.* for Life, to *B.* for Life, to *D.* and *E.* Truſtees to preſerve, *&c.* to his firſt and other Sons in Tail, to *C.* for Life, to the Daughters of *B.* in Tail, to the Daughters of *C.* in Tail, Remainder to the Right Heirs of *A.* and as to other Part to *A.* for Life, to *C.* for Life, *&c.* in like Manner, with Covenant to ſuffer Recovery in Twelve Months, and for further Aſſurance, (but the Truſtee in the original Settlement not a Party) and by other Leaſe and Releaſe to which the Truſtee in the old Settlement is a Party, *A. B.* and *C.* make *D.* and *E.* Tenants to the *Præcipe* to ſuffer a Recovery for the Purpoſe in the former Settlement; and before the Recovery *B.* dies, leaving a Son, and then *A.* and *C.* covenant to ſuffer a Recovery, *D.* and *E.* to be Tenants to the *Præcipe*, to the Uſe (as to Part) of *A.* in Fee, and as to other Part to the Uſe of *A.* for Life, Remainder to *C.* in Fee, and the Recovery is ſuffered accordingly; and it is found that *B.* was a Baſtard, yet his Son ſhall have the Lands limited to him by the firſt Deeds, and the Benefit of the Covenants therein; and *C.* ſhall have thoſe limited to *A.* for Life, with Remainder to him *C.* for Life. *Stapilton* v. *Stapilton, T.* 1739. 1 *Atkyns* 2.]

[If Father and Son on the Son's Marriage execute Articles, and ſettle Part of the Eſtate to the Son for Life, then in Aid of other Lands to ſecure Wife's Jointure, then to raiſe additional Portions to Daughters, then to Truſtees to preſerve, &c. to Sons in Tail Male, then to Sons by other Marriage, then to his ſecond Daughter *A.* and her Heirs Male, unleſs the Father makes other Appointment, then to his other Daughters in Tail, then to *B.* and then to the Father's right Heirs; and the Father and then the Son die; the Articles ſhall be carried into Execution for the Benefit of *A.* *Goring* v. *Naſh*, *M.* 1744. 3 *Atkyns*. 186.]

[If *A.* on Marriage with *B.* agrees to ſettle her Fortune on her for Life, then if no Children to himſelf; and afterward, an Acceſſion of Fortune comes to *B.* on her Siſter's Death, to ariſe by Sale of her Father's Eſtate, which is ſold, and the Money received by *C.* a Truſtee in the Marriage Articles, to whom *A.* gives a Receipt for his Share, which he thereby promiſes to lay out purſuant to the Truſt repoſed in *C.* this Note binds *A.* his Repreſentatives and Claimants under his Will to perform, and the Court will decree the Money to be ſo laid out. *Whorwood* v. *Univerſity College*, *T.* 1750. 1 *Vezey* 534.]

So, if upon a Purchaſe, there is a Covenant to give Collateral Security that his Wife ſhall not revoke, it ſhall be decreed, that the Heir of the Wife ſhall convey, or that ſuch Collateral Security ſhall be given. *Ch. R.* 192.

So, if there is an Agreement for the Sale of an Eſtate, the Heir ſhall be decreed to convey, tho' the Money ſhall be paid to the Executor. 2 *Ver.* 215.

So, if the Agreement is by Bond, to ſettle before ſuch a Day, and the Obligor dies before the Day, by which there can be no Performance, and the Bond is ſaved. *R. Eq. Abr.* 18.

If there is an Agreement, before the Death of *B.* to divide all that *B.* ſhould deviſe to *A.* and *C.* between them, it ſhall be decreed. 2 *P. W.* 183.

If an Agreement is by a Veſtry, upon a valuable Conſideration, that a Bell ſhall not be rung in a Morning early. 2 *P. W.* 267.

If there is an Agreement for the Purchaſe of Land, and the Purchaſer dies, the Executor ſhall be decreed to pay the Money, tho' the Agreement was voluntary, and the Land ſhall be conveyed to the Heir. 2 *P. W.* 175, (631.)

[If a Contract for Stock be executed, the Court will not break into it, if it be only executory, Plaintiff muſt ſeek his Remedy at Law. *Capper* v. *Harris*, *M.* 1723. *Bunb.* 135.]

[An Agreement for a Leaſe from a Dean and Chapter, ſigned by the Dean only, for himſelf and Chapter, ſhall bind the Chapter. *Dean of Ely* v. *Stewart*, *T.* 1740. 2 *Atkyns* 44.]

[If *A.* treating with the Agent of *B.* conſents he *B.* ſhall build, on Condition he employs him *A.* in his Trade, the Agent ſays nothing, *B.* builds and does not employ *A.* and *A.* builds a Wall to obſtruct the Lights; *A.* ſhall be decreed to pull down the Wall, and *B.* ſhall employ him. *Eaſt-India Company* v. *Vincent*, *M.* 1740. 2 *Atkyns* 83.]

(2 C. 2.) Againſt whom it ſhall be decreed.

So an Agreement ſhall be decreed againſt a ſubſequent Purchaſer, with Notice. *R. Ca. Ch.* 212. *Vide Poſt*, (4 I, &c.—4 W. 28.)

Altho' a Conveyance and Fine be executed to him. *Semb. Ca. Ch.* 212.

[But if *A.* being indebted to *B.* by Judgment, agrees to aſſign a Leaſe to him who is to give him a Defeazance, and *A.* ſends the Leaſe to *B.* and a Letter to a Scrivener to draw ſuch Aſſignment and Defeazance, and before Execution dies; and his Executor, without Notice, aſſigns the Intereſt of Leaſe to *C.* and *D.* in Truſt for himſelf, and then for them, (who were all Judgment Creditors.) Tho' this is a good Lien on the Teſtator, and on the Executor, and within the Statute, yet as the Executor and *C.* and *D.* have a legal as well as an equitable Title, the Court will not decree the Agreement to be carried into Execution. *Smith* v. *Watſon*, *in Sc. H.* 1719. *Bunb.* 55.]

So there ſhall be a Decree againſt an Heir, who claims by a voluntary Conveyance, where the Articles are upon a valuable Conſideration. *R.* 1 *Ch. R.* 146, 7. *Vide Poſt*, (3 M. 5.)

So if *A.* who has only a Poſſibility, in caſe his elder Brother dies without Iſſue, agrees to ſettle Lands, after his Deceaſe, if they deſcend to him, upon a Relation, who married without his Father's Conſent, to the Intent that his Father ſhould be reconciled, tho' there was no other Conſideration. *R.* 1 *Ch. R.* 159.

So an Agreement with an Infant, if he receives Intereſt under it after his full Age, ſhall be decreed againſt him. 1 *Ver.* 132.

So an Agreement with the Truſtees of the Inheritance, after an Eſtate for Life in *A.* for the Purchaſe of the whole Eſtate, ſhall be decreed againſt *A.* if made with his Conſent. *R.* 1 *Ch. R.* 228.

[If Money is deviſed to be laid out in Land, to the Uſe of *B.* in Tail, Remainder to *C.* in Fee, and they agree in Writing to divide the Money, and *B.* dies without Iſſue before it is divided, the Agreement ſhall be decreed againſt *C.* in Favour of *B.*'s Executor. *Carter* v. *Carter*, *P.* 6 *G.* 2. *C. T. T.* 271.]

So an Agreement with Huſband and Wife to levy a Fine, make a Surrender, *&c.* ſhall be decreed againſt the Wife ſurviving. *R.* 2 *Ver.* 61.

So, by an elder and younger Brother, it ſhall be decreed againſt the Younger, after the Death of the elder Brother. *Dub. Winch.* 4, 5.

But an Agreement, by Tenant for Life, or in Tail, Lord of a Manor, for a Copyhold Eſtate, ſhall not be decreed againſt him in the Remainder, or Reverſion. 1 *Ver.* 472.

[If Tenant in Tail, with or without Remainder over, contracts for Sale, receives the Purchaſe-money, and dies without Fine or Recovery, the Agreement ſhall not be carried into Execution againſt the Iſſue in Tail, or Remainder claiming *per Formam doni*; even tho' Tenant in Tail had been decreed to perform. *Hinton* v. *Hinton*, *T.* 1755. 2 *Vezey* 631.]

An Agreement by a Joint-tenant for his Moiety, ſhall not be decreed againſt the Survivor. 1 *Ver.* 63.

Yet, an Agreement upon a Marriage to make a Settlement, after the Iſſues of the Marriage, upon other Sons of the Father, ſhall be decreed againſt the Covenantor, at the Suit of the younger Son, tho not within the Conſideration. 2 *P. W.* (594.)

So a voluntary Settlement ſhall be decreed againſt the Heir.

So a voluntary Settlement upon one Daughter, ſhall be decreed againſt the other Daughter and Co-heir, tho' the Father by his Will deviſed the Eſtate to them both. *R.* 1 *Ch. R.* 167.

So an Agreement by *A.* and *B.* upon the Account of a Pariſh, for Pavement, or other Work done for the Benefit of the Pariſh, where *A.* has the Agreement in his Cuſtody, ſhall be decreed againſt *A.* and *B.* and they muſt purſue their Remedy againſt the other Pariſhioners. *R. Hard.* 205.

If *A.* and others undertake the draining of a Level, and are allowed a third Part of the Level, and thereupon agree to maintain the Banks of the Whole; *B.* upon this Agreement, ſhall be aided againſt *A.* and the others, if they do not maintain them, altho' he is not Party or Privy to the Agreement. *R. Hard.* 169.

(2 C. 3.) When upon a *Parol* Agreement, and when not.

So, if there be an Agreement by *Parol*, if it is in Part executed, as if the Money, or the greateſt Part of it is paid to the Vendor. *Vide Eq. Abr.* 19.

[An Agreement is binding on a Party who has not ſigned it, if he has done a particular Thing thereon, as if he has paid Part of Purchaſe-money. *Owen* v. *Davies*, *H.* 1747. 1 *Vezey* 82.]

So if a Man exchanges Land by *Parol*, and one Party enters upon the Land, he ſhall be compelled to convey his Land to the other. *Vide Eq. Abr.* 21.

So, a *Parol* Agreement, executed by Delivery of the Poſſeſſion, was decreed againſt a Purchaſer with Notice after Conveyances to him executed. 1 *Ver.* 364. *Eq. Abr.* 21.

So, a *Parol* Agreement in Conſideration of a Marriage with the Party's Niece, where the Huſband has made a Settlement accordingly on his Part. *R. Ch. R.* 405.

So, upon an Agreement for the Surrender of a Term, where the Leſſor accepts the Key, he ſhall be bound to accept of the Surrender. *R.* 2 *Ver.* 113.

So,

So, if *A.* offers 1200*l.* for a Purchaſe, which is accepted, and *A.* has Poſſeſſion given, and a Conveyance is directed, but afterwards *A.* would recede, he ſhall be decreed to proceed, if the Title is good. *R.* 2 *Ver.* 455.

[If *A.* has paid Part of the Purchaſe-money for Copyhold Lands, and *B.* given him a Note acknowledging the Receipt in Part, and promiſing to make good Title, *&c.* and brought his Writings to *A.*'s Counſel, who approved, and *A.* had done Acts of Ownerſhip, and made Promiſes, *&c.*; the Court will compel *A.* to a ſpecifick Performance. *Borret* v. *Gomeſerra*, *in Sc. M.* 1721. *Bunb.* 94.]

So, if an Agreement is executed for the making of a Jointure, *&c.* and afterwards, by *Parol* Agreement, Part of the Portion is depoſited, for making a Purchaſe for the Jointure, and 100*l. per Annum* is purchaſed therewith, and afterwards mortgaged, there ſhall be a Decree againſt the Mortgagee. *R.* 2 *Ver.* 619.

[If there is an Agreement in Writing for taking a Houſe at 32*l.* Owner to put it in Repair, and afterwards Parol Agreement for 40*l.* Owner having rebuilt with Tenant's Conſent, and Leſſee brings Bill for ſpecific Performance of the written Agreement, Parol Evidence may be given of the new Agreement to rebut the Equity prayed. *Legal* v. *Miller*, *T.* 1751. 2 *Vezey* 299.]

[If a Man gives Bond on his Son's Marriage to pay his Wife and the Survivor 150*l. per Annum*, Parol Evidence may be given that the real Agreement of all Parties was for 100*l.* only. *Pitcairne* v. *Ogbourne*, *T.* 1751. 2 *Vezey* 375.]

But a *Parol* Agreement was not decreed, when the Money was not paid, tho' it was provided for the Vendor; but only Damages given for the Money provided.

So, where the Draught of a Conveyance was agreed to and ordered to be ingroſſed, the Agreement not being ſigned, nor any Money paid, it was not decreed.

[The Vendees ordering Conveyances to be drawn, in purſuance of a Parol Agreement, and going ſeveral Times to ſee the Premiſſes, and a Letter from the Vendor mentioning the Agreement but not the Price, are not ſufficient Evidence to have the Agreement decreed; but taking Poſſeſſion, or ſuch other Act, in purſuance of Agreement, is. *Clerk* v. *Wright*, *H.* 1737. 1 *Atkyns* 12.]

[If a Steward makes an Agreement with a Tenant to deliver up Part of his Premiſſes, and to have a new Leaſe of the Reſt on certain Terms, and the Tenant delivers the Agreement to the Steward to be entred in his Lord's Contract Book, which is done, and the Tenant delivers up the Part of his Premiſſes accordingly; yet the Lord is not bound by this Agreement. *Charlwood* v. *D. Bedford*, *H.* 1738. 1 *Atkyns* 497.]

[If *A.* and *B.* agree, that if *B.* will ſurrender his Copyhold to *C.* *A.* will ſecure him an Annuity of 5*l.* and *A.* ſurrenders his Copyhold to *C.* charged with the Annuity, but *B.* refuſes to ſurrender his, *C.* ſhall not be obliged to pay the Annuity, and Parol Evidence may be admitted to rebut the Equity ſet up by the Bill. *Walker* v. *Walker*, *M.* 1740. 2 *Atkyns* 98.]

[But *C.* might bring his Bill to compel *B.* to ſurrender. *Ibid.*]

[If Huſband gives Bond to Truſtees to ſecure 500*l.* to his Wife; if ſhe ſurvives, parol Evidence cannot be admitted to ſhew it was intended in Lieu of Dower. *Tinney* v. *Tinney*, *M.* 1743. 3 *Atkyns* 8.]

[If a Bill is brought to carry into Execution Agreement for the Leaſe of a Houſe, Defendant the Leſſor ſhall be admitted to Parol Proof that Plaintiff, who wrote the Agreement, omitted to make the Rent (which was reduced to 9*l.* inſtead of 14*l.* the former Rent) payable clear of all Taxes. *Joynes* v. *Statham*, *M.* 1746. 3 *Atkyns* 388.]

[If *A.* Tenant in Tail, to raiſe Money to pay Debts on his Eſtate, propoſes to his Brother *B.* Tenant in Tail in Reverſion, to join in Mortgage and Bond for 1000*l.* which is done, and the Money all paid to *A.* parol Evidence ſhall not be admitted to prove that this Debt ſhall be entirely on the Eſtate of *B.* *Semb. Robinſon* v. *Gee*, 1749. 1 *Vezey* 251.]

[If a Mother agrees to give her Daughter a Portion on Marriage, which is recited in Articles to which ſhe is not a Party, but ſets her Name as Witneſs, ſhe ſhall be decreed to pay. *Welford* v. *Beezley*, *M.* 19 *G.* 2. *Wilſon* 118.]

So, after 18 Years paſſed, and a Fine levied of the Land, and no Claim within five Years, a *Parol* Agreement was not decreed.

So, where only 10*s.* was paid; or 20*s.* 1 *Ch. R.* 241.

So, a Leaſe by *Parol* only ſhall not be decreed againſt the *Heir*. *R.* 2 *Ca. Ch.* 202.

[Where there is a whole Agreement by Parol, that Part of it executed, Equity will decree ſpecific Execution of the Whole; but where there is an Agreement by Writing executed, Evidence cannot ſupply any Defect in that Agreement, which was intended to be Part of that Agreement, but not inſerted in it. *Binſted* v. *Colman*, *in Sc. T.* 1720. *Bunb.* 65.]

[To add to an Agreement in Writing, by admitting parol Evidence of what will affect Land, is againſt the Statute, and againſt the Rule of Common Law prior to it. *Parteriche* v. *Powlet*, *T.* 1742. 2 *Atkyns* 383.]

(2 C. 4.) Since the *St.* 29 *Car.* 2. *ch.* 3.

[Equity will not lay down any other Rule of Conſtruction of this Statute than Law does. *Hayward* v. *Hammond*, *M.* 1738. 1 *Atkyns* 13.]

And by the *St.* 29 *Car.* 2, 3. All Leaſes, Eſtates, or Intereſts of Freehold, or for Years, or any uncertain Intereſts in or out of Lands, Tenements, *&c.* not put in Writing, and ſigned by the Parties, or their Agents, authorized in Writing, ſhall have no Effect but as Eſtates at Will, except Leaſes not exceeding 3 Years, whereof the Rent ſhall be two Thirds of the true Value. *Vide Poſt*, (3 Z. 2.)

And no Action ſhall be to charge a Defendant, on any Agreement on Conſideration of Marriage, or on any Contract, or Sale of Lands, *&c.* or any Intereſt concerning them, unleſs ſuch Agreement, or ſome Note of it, be in Writing ſigned by the Party, or ſome authorized by him.

And therefore an Agreement by *Parol* ſhall not be decreed, tho' the Plaintiff expends Money in Confidence of it. 1 *Ver.* 151.

[So if *A.* agrees to ſell Land to *B.* and writes to his Agent to give him the Title Deeds, he having agreed to diſpoſe of it to him, and then *A.* ſells it to *C.* who had Notice of this Tranſaction; yet this Letter does not take it out of the Statute of Frauds and Perjuries, for the Agreement does not appear in it. *Seagood* v. *Neale*, *P.* 7 *G. Str.* 426.]

So, when an Agreement is in Writing, and an additional Agreement is afterwards made by *Parol*, this ſhall not be helped. *R.* 2 *Ca. Ch.* 142.

If *A.* in Treaty for a Purchaſe deſiſts, upon an Agreement by *B.* to permit him to have Part of the Land, tho' *B.* thereupon purchaſes. *Cont. at the Rolls, but per Cowper acc.* 2 *Ver.* 627.

So, if there is a Letter agreeing to give ſo much with a Daughter, and afterwards a different Agreement is written, but not ſigned, it ſhall not be decreed. *Semb.* 2 *Ver.* 34.

Yet an Agreement to aſſign a Term and Goods, and that it ſhould be put in Writing, was decreed to be executed, it being Part of the Agreement that it ſhould be put in Writing, and Part of the Money being paid. *R. upon a Plea of the St.* 29 *Car.* 2.—2 *Ca. Ch.* 135, 6. *Adm.* 1 *Ver.* 151. Eſpecially if the reducing it into Writing is prevented by Fraud. *Eq. Abr.* 19.

If a Bond is given by a Woman to *A.* to ſettle her Eſtate on him in Fee, after Marriage; altho' the Bond is made void by the Marriage, it ſhall be Evidence of the Agreement, which ſhall be decreed. 2 *P. W.* 244.

So, an Agreement to ſell a Houſe, *&c.* ſigned only by one; he ſhall be inforced to perform it, tho' it was not ſigned by the other. *R.* 2 *Ca. Ch.* 164.

So, if an Agreement be by *A. B.* and *C.* to make a Leaſe, and it is executed by *A.* it ſhall be decreed that *B.* and *C.* who were the Sons of *A.* ſhall execute it, tho' the Agreement was by *Parol*; for it is out of the Statute. *R. upon a Plea of the St.* 1 *Ver.* 210.

An Agreement for a Mortgage ſhall be decreed, tho' by *Parol*, where it was executed by one Party. *Eq. Abr.* 20.

So if *A.* upon a Treaty of Marriage between his Daughter and *B.* writes by Letter, that he will give 1500 *l.* in Anſwer to a Letter by *C.* and afterwards *C.* by another Letter ſays, that he will go no further in the Treaty, if *A.* will not give more, and *A.* afterwards by *Parol* declares that he will give 1500 *l.* he ſhall be decreed ſo to do, tho' the firſt Promiſe to *C.* ſeemed to be waived by his Anſwer. —*R.*

—*R.* 1 *Ver.* 111, 201. *R.* where there was ſuch a Letter, without more; *and affirmed in Parliament*, 2 *Ver.* 322.—*Dub. Eq. Abr.* 20.

But a Letter, that he will give 3000*l.* not ſhewn to the Huſband, who accepts of 2000*l.* given by Will, is not a Ground for more. 2 *P. W.* 75.

So, if a Joint Leſſee agrees by *Parol* to aſſign his Part of the Leaſe, to his Companion, and accepts of any Thing to bind the Contract, the Statute is no Plea. 1 *Ver.* 472, 3.

[So if there is a Parol Agreement for a Leaſe for 21 Years, and Leſſee enters and enjoys for ſeveral Years, he ſhall not plead the Statute. *Earl of Aylesford's Caſe, M.* 1 *G.* 2. *Str.* 783.]

So, if Money is expended, in Confidence of a *Parol* Agreement, Equity will relieve for the Money. 1 *Ver.* 159.

So, if a Leaſe by *A.* to *B.* is agreed by *Parol*, and drawn and ingroſſed by the Counſel of *B.* and afterwards executed by *A.* it ſhall not be avoided by *B.* *Semb. upon a Plea of the Stat. and the Plea over-ruled.* 1 *Ver.* 221, 2.

[A Perſon ſubſcribing a Deed as a Witneſs only, and knowing the Contents, is a Signing within the Statute, if it is a compleat Agreement reduced to a Certainty; for where the Subſtance has been complied with, the Forms of the Statute have not been inſiſted on. *Welford* v. *Beaſeley*, *P.* 1747. 3 *Atkyns* 503. 1 *Vezey* 6.] *Wilſon* 118.

So, if an Agreement, upon a Treaty of Marriage, is drawn by an Attorney, but before the Signing they part, yet the Marriage is ſolemnized, with the Privity of them all; it ſhall be decreed. *R.* 2 *Ver.* 200.

[So if the Defendant before Marriage promiſed verbally to ſettle the Plaintiff's Eſtate to her ſeparate Uſe, and after Marriage delares by Letter, that he is ready to ſign the Writings according to her Deſire; he ſhall not be permitted to plead the Statute of Frauds and Perjuries. *Viſcount. Dowager Mountacute* v. *Maxwell*, *M.* 6 *G. in Canc.* *Str.* 236.]

[If an Agreement is made previous to Marriage, that an Eſtate ſhall be, after the Mother's Deceaſe, enjoyed by the Wife for her ſeparate Uſe during the Coverture, and the Deeds are drawn, limiting it to the Huſband, and ſhe refuſes to execute till rectified, whereupon a Note is given and ſigned by the Huſband, that ſhe ſhall ſo enjoy; this Note ſhall be looked on as Part of the Agreement and Settlement, and the Wife ſhall be relieved againſt the Huſband or his Aſſignees. *Tyrrell* v. *Hope*, *P.* 1743. 2 *Atkyns* 558.]

[If there is Agreement that 500*l.* ſhall be ſettled to Wife's Uſe during Coverture, and afterwards as ſhe ſhall appoint, but the Parties are married before it is executed; afterwards it is prepared, and Alterations made in Huſband's Writing, who tells Wife they are for her Benefit, and ſuffers her to receive to her Uſe during Coverture; the Statute of Frauds cannot be pleaded to a Diſcovery of ſuch Agreement. *Taylor* v. *Beech*, *T.* 1749. 1 *Vezey* 297.]

If ſigned by the Plaintiff, but the Defendant tears the Articles, yet aſſents to the Marriage, the Defendant ſhall be decreed to execute. *R.* 2 *Ver.* 373. *Eq. Abr.* 20.

If an Agreement prayed to be performed be confeſſed by the Anſwer, it ſhall be decreed, altho' by *Parol*. *Eq. Abr.* 19. *Eq. Ca.* 86.*

* 2d Part of 2 *Mod. Ca.*

(2 C. 5.) Decreed, tho' not equal.

And an Agreement may be decreed, tho' it is not equal; as, if a Man agreed to aſſign a College Leaſe, for an Abatement of 420*l.* when the Leaſe was purchaſed for 4320*l.*) when the King was reſtored; the Agreement was decreed againſt the Son, after the Reſtoration. *R. Ca. Ch.* 42.

If *A.* agrees to pay 750*l. per Ann.* for Rent of Water to the City of *London*, and it is not of the Value of 300*l. per Ann.* he ſhall not be aided; for a loſing Bargain ſhall be decreed as well as a beneficial one. *R.* 2 *Ver.* 423.

If *A.* agrees to pay 40*l. per Ann.* to *B.* an Executor, in Conſideration of the perſonal Eſtate of the Teſtator transferred to him, and there is not ſufficient for Payment of Debts, if there was no Miſrepreſentation, it ſhall be decreed to be carried into Execution. *R.* 1 *P. W.* 542.

(2 C. 6.) Tho' founded upon Miſtake.

So, an Agreement founded upon Miſtake, may be decreed; as, if Tenant in Tail deviſes Freehold Land to his Youngeſt Son, and Copyhold to the Eldeſt, and the Youngeſt ſets up a Recovery, whereupon it is agreed, that the Youngeſt and Eldeſt Son ſhall enjoy their reſpective Deviſes; the Agreement was decreed againſt the Eldeſt Son, tho' no Recovery was compleated. *R. Ca. Ch.* 85.

So, Marriage Articles to make a Settlement upon a Son, for Life, to his Wife for Jointure, then to the firſt, ſecond, and other Sons of the Marriage, then to the right Heirs of the Son, ſhall be allowed, tho' the Father inſiſts, that he was ſurprized, and intended, upon Default of Iſſue Male, to have limited a Proviſion for the Iſſue Female of the Marriage, and then to his ſecond Son, *&c.* 1 *Ver.* 320.

[If the proper Papers are before the Parties and their Counſel, when preparing an Agreement, they ſhall be ſuppoſed to be acquainted with the Conſequences at Law; and after an Agreement has ſettled all Diſputes between Parties, the Court will not enter into a Queſtion which might have been ſtarted had there been no ſuch Agreement. *Pullen* v. *Ready*, *M.* 1743. 2 *Atkyns* 587.]

[If a Man deviſe an Annuity payable out of real Eſtate, and the Annuity is paid for many (16) Years. without any Deduction, the Court will preſume it was by mutual Conſent, and will not decree the Annuitant to refund the Land-tax, tho' for the future he ſhall be ſubject to it. *Nicholls* v. *Leeſon*, *M.* 1747. 3 *Atkyns* 573.]

[The Court will not relieve againſt a Contract in Writing, (as a Policy of Inſurance) unleſs there is expreſs Proof of the Miſtake of the Intention of the Parties. *Henkle* v. *Royal-Exchange Aſſurance*, *M.* 1749. 3 *Vezey* 317.

(2 C. 7.) Tho' the Conſideration was remote. *Vide Poſt*, (2 T. 9.—— 4 H. 9.—— 4 O. 7.)

So an Agreement ſhall be decreed, tho' it be for the Settlement of a Remainder, after an Eſtate-Tail. *Cont. Ca. Ch.* 244.

So, if a Woman agrees with the Heir, who claims the Inheritance, that if ſhe dies without Iſſue, ſhe will leave him the Land, or 500*l.* and afterwards marries and dies; the Agreement ſhall be decreed againſt the Huſband. 1 *Ver.* 48.

So, if an Agreement for a Jointure, Proviſion for Children, *&c.* is voluntary, it ſhall be decreed. 1 *Ver.* 427, 8.

But, where *A.* ſettles Land, upon the Marriage of *B.* his Son for Life, afterwards to his Wife for Life, afterwards to the Heirs of the Body of *B.* and covenants to make a Settlement of other Land to the ſame Uſes; and makes *B.* his Executor, and dies, without making any other Settlement: *B.* levies a Fine of the Lands ſettled, and gives 200*l.* to *C.* his Son, upon Condition, that he releaſes all Demands to his Executrix; *C.* ſhall not be aided, in reſpect of the Covenant of the other Settlement made by *A.* becauſe by ſuch Settlement *B.* would have been Tenant in Tail, and might by Fine, or Recovery have barred *C.* 1 *Ver.* 480.

(2 C. 8.) But an Agreement ſhall not be decreed.

(2 C. 8.) If made without a Conſideration. *Vide Poſt*, (2 T. 9.)

But an Agreement ſhall not be decreed, if there be not any Conſideration for it.

Or, if the Conſideration does not extend to the Plaintiff: As, if *A.* upon the Marriage of his Son with *B.* covenants to ſettle Lands, To the Uſe of himſelf for Life, then to the Son for Life, then to *B.* for Life, then to the firſt and other Sons of the Marriage in Tail, Remainder to *D.* his Couſin, *&c.* After the Death of the Son without Iſſue, *D.* ſhall not compel the Execution of the Covenant, againſt the Deviſee of *A.* *R. in Exch. H.* 5 *Geo.* 2. *inter Parry and Hughs*, 2 *P. W.* 256.

[An Agreement to ſettle Boundaries mutually is a Conſideration for the Court to decree ſpecifically. *Penn* v. *Ld. Baltimore*, *P.* 1750. 1 *Vezey* 444.]

If *A.* has a Perſonal Eſtate by Will, which gives it, if *A.* dies without Heirs Male of his Body to *D.* and afterwards *A.* upon Marriage agrees to purchaſe Land to be ſettled *ut ſupra*, and before the Settlement is made *A.* dies without Iſſue Male, having three Daughters; *Qu.* Whether *D.* ſhall compel Execution. *Temp. G.* 2. 10. *Vide infra.*

[If

[If Tenant for Life contract for Sale of Lands, the Agreement ſhall not be decreed for the Son, becauſe the Lien was not reciprocal. *Armiger* v. *Clarke*, *T.* 1722. *Bunb.* 111.

But, if the Conſideration extends to him in the Remainder, it ſhall be decreed; as, if *A.* and his Son, upon the Marriage of the Son, covenant to make a Settlement, after the Iſſue of the Marriage, upon *B.* the ſecond Son, it ſhall be decreed, if there was an Eſtate in the Eldeſt Son; for perhaps the Settlement on *B.* was an Inducement to *A.* to join. 2 *P. W.* 256, (594.)

So, If a Teſtator had limited a Perſonal Eſtate to the Son of *A.* and after his Death without Heirs Male of his Body, to *B.* the ſecond Son. 2 *P. W.* (600.)

[An Agreement to pay Money in Conſideration of ſtifling a Proſecution for Felony ſhall not be decreed; but for ſtifling a Proſecution for a Fraud, it may. *Johnſon* v. *Ogilby*, *P.* 1734. 3 *P. W.* 277.]

(2 C. 9.) If it be unreaſonable.

Or, if it is apparently unreaſonable; as a Marriage Agreement, by which the Daughter would have more than the Father, who was in Debt, and the Mother and two other Daughters would have left, where the Huſband afterwards made his Addreſſes to another Woman, and then, without reducing the Agreement into Writing, married this Daughter, was not decreed. 2 *Ca. Ch.* 17.

So, where *A.* agreed to ſell Land to *B.* for 15,000 *l.* which was to be paid in Money, or Land to ſuch a Value returned for it, and afterwards ſold, at an Under-value, Part to *B.* on Pretence, that it was immaterial what Value was expreſſed, and then *B.* would have returned the Reſidue in Land; the Agreement was not decreed, altho' performed in Part. *R.* 2 *Ver.* 186.

So an Agreement of a Woman in Conſideration of 10 *l.* to pay 100 *l.* if ſhe married, ſhall be relieved for all but 10 *l.* *Ow.* 34.

So an Agreement, for 30 *l.* and 20 *l.* *per Ann.* for the Life of a Father, to convey the Party's Remainder in Tail, after the Death of his Father, of the Value of 800 *l* if he came into Poſſeſſion, ſhall not be decreed. *R. per Nottingham. Cont. per North, but Acc. per Jeffrys*, 1 *Ver.* 167, 271.

[If a Daughter left an Infant, ſoon after coming of Age, agrees with the Widow concerning the Diſtribution of her Father, an Inteſtate's Eſtate, and her Huſband afterwards ratifies the Agreement, yet if it appears that it was conſiderably more valuable, and that Daughter and Huſband were both ignorant of it, the Agreement ſhall be ſet aſide. *Cocking* v. *Pratt*, *H.* 1749. 1 *Vezey* 400.]

If it becomes unreaſonable by Matter *ex poſt facto*. *Vide Poſt*, (2 T. 13.)

(2 C. 10.) Or void in Law.

So, if it is void by Law; as, if the Agreement is to give Re-entry to a Stranger.

[This Court will not carry into Execution an Agreement for Aſſignment of the Fees and Profits of the Office of keeping a Houſe of Correction, for it is contrary to the Intent of 23 *H.* 6. *c.* 10.; nor the Profits of the Tap-houſe, for it tends to increaſe Debauchery. *Methwold* v. *Walbank*, *H.* 1750. 2 *Vezey* 238.]

So if there be an Agreement by Huſband and Wife, it ſhall not be decreed againſt the Wife, after the Death of her Huſband. 2 *Ca. Ch.* 27.

Yet, where an Agreement cannot be performed ſpecifically, by Reaſon of an Incumbrance, there ſhall be a Settlement for a Recompence out of the Perſonal Eſtate of the Party. *Ch. R.* 406.

(2 C. 11.) Or, diſcharged afterwards.

So, if an Agreement be diſcharged, it ſhall not be afterwards decreed.

Altho' an Agreement in Writing was diſcharged by Parol only. *R.* 1 *Ver.* 240.

So, if there be an Agreement to pay 50 *l.* for a Share in the *Luteſtring* Company, which is afterwards prohibited. 2 *P. W.* 220.

(2 C. 12.) Or, obtained indirectly.

So, if it is obtained by Practice; as, If *A.* refuſes to ſell Land to *B.* and afterwards *B.* obtains an Article for a Sale to *D.* at an Under-value; for Articles executed in Equity ought to be obtained without Surprize, or Circumvention. *R.* 1 *Ver.* 227. *Eq. Abr.* 18. *Vide Poſt*, (2 T. 11.—3 M. 1.—4 L. 1.)

[If a Man ſelling Timber, aſſerts upon his Honour, that *A.* and *B.* Timber-merchants valued it at 3500 *l.* and it appears they valued it at 2500 *l.* the Agreement ſhall not be decreed. *Buxton* v. *Liſter*, *T.* 1746. 3 *Atkyns* 383.]

So, if, upon a Purchaſe by *B.* the Agent of the Vendor agrees, that he himſelf ſhall have one Farm at ſuch a Price, or 1300*l.* *Ch. R.* 32, 3.

So, if a Man upon his Marriage with the Daughter of *B.* makes an Agreement, that he will give to his Father privately ſo much of the Portion; it ſhall be diſallowed in a Court of Equity. *R.* 2 *Ver.* 765. *Vide* 1 *P. W.* 121, 496.

So, if the Daughter promiſes *B.* that if he will give ſuch a Portion as was required, ſhe will repay ſo much afterwards. *Vide Eq. Abr.* 88.

So, if a Father takes a Bond of his Son to pay him ſo much after Marriage; for it was extorted from him, by his Awe of his Father, 1 *Sal.* 158. *Vide* 1 *P. W.* 121.

[But if a Father, and Son of full Age, come to an Agreement to alter the Limitations under a Settlement, the Court will not ſet it aſide, on Pretence of being drawn in by the Father's Authority. *Tendril* v. *Smith*, *M.* 1740. 2 *Atkyns* 85.]

So, if a Man agrees to releaſe to the Guardian of his Wife, after Marriage, for the Peace of the Family, all Accounts for the meſne Profits of an Eſtate of the Wife, it ſhall be diſallowed; for every Thing, which a Father or Guardian inſiſts upon for his private Gain, or any Security for it, is Extortion. *R. per Cowper*, 1 *Sal.* 158.

[If two Executors and Truſtees, one an Attorney who drew the Will, refuſe to prove, and ſay they will obſtruct the *ceſtuique Truſt* from adminiſtering, till he executes a Deed to allow them certain Sums above their Legacies; tho' this Deed is ſettled by his Counſel, the Court will ſet it aſide as unduly obtained. *Ayliffe* v. *Murray*, *M.* 1740. 2 *Atkyns* 58.]

[An Agreement ſhall not be ſet aſide becauſe one of the Parties was drunk, unleſs ſome unfair Advantage was taken; nor a reaſonable Agreement to ſettle Family Diſputes, becauſe paternal Authority interpoſed. *Cory* v. *Cory*, *T.* 1747. 1 *Vezey* 19.]

(2 C. 13.) Or, made without proper Parties.

So, if an Agreement is not made between proper Parties: As an Agreement with *Ceſtuy que Truſt* of the Surplus, without the Truſtees. *D. Ca. Ch.* 175.

If the Huſband of an Executrix makes an Agreement for the Aſſignment of an Annuity to Creditors, but before Aſſignment the Executrix dies, the Agreement ſhall not be decreed. 2 *Ca. Ch.* 17.

So an Agreement by 3 Truſtees only, where 4 are intruſted, ſhall not be decreed. *R.* 2 *Ca. Ch.* 202.

(2 C. 14.) Or, not Mutual.

Or, if the Remedy upon the Agreement is not reciprocal. *D. Ca. Ch.* 209.

So, if a Bond is given, with a Penalty, for the making of a Settlement of an Eſtate to ſuch and ſuch Uſes, a ſpecific Performance ſhall not be decreed; for he has relied upon the Penalty. *R. Ca. Ch.* 188.

(2 C. 15.) So Failure of one Party excuſes the other.

If an Agreement is, upon Payment of leſſer Sums at future Days, to deliver up all Securities; if Payment is not preciſely made at the Days limited there ſhall not be a Decree for Performance. *D. Ca. Ch.* 110. *R.* 1 *Ver.* 210. *Ch. R.* 23.

[But Articles for the Purchaſe of an Eſtate ſhall be performed, tho' the Vendor did not produce his Title-deeds, and Tender a Conveyance within the Time limited by the Articles. *Gibſon* v. *Paterſon*, *H.* 1737. 1 *Atkyns* 12.]

If a Deviſe is, that *A.* paying the Arrears of an Annuity, in 3 Years, ſhall have an Abatement of 100*l.* and all Intereſt: If he does not pay the Arrears, within 3 Years, he ſhall not have the Abatement. *Ca. Ch.* 52.

If an Agreement is for the Sale of a Ship, Land, *&c.* and Poſſeſſion delivered, and a Bond given for the Money; if the Vendor afterwards refuſes a Conveyance, upon Demand, the Vendee ſhall have his Bond delivered up. 2 *Ca. Ch.* 5. *Vide Poſt*, (4 D. 18.)

If an Agreement is by Articles for the Aſſignment of a Term, and afterwards, upon a Debate concerning the accruing Rent, Counſel propoſe to procure another Purchaſer within 14 Days, and he makes an Aſſignment to *B.* on the laſt Day of the 14; there ſhall not be a Decree againſt *B.* for an Aſſignment to *A.* purſuant to the Agreement, tho' *B.* had Notice. *R. Ca. Ch.* 122.

[If

[If an Agreement is made for Purchaſe of Timber, and that Articles ſhall be drawn with uſual Covenants, and the Seller refuſes to inſert ſuch Covenants (as to indemnify the Purchaſer againſt a Stranger, on whoſe Land the Trees and Hedge-rows would probably fall) it ſhall not be ſent to a Maſter to ſee proper Covenants (as in the Caſe of Land) but the Agreement ſhall not be decreed. *Buxton* v. *Liſter*, *T.* 9746. 3 *Atkyns* 383.]

(2 C. 16.) Specific Performance in the Diſcretion of the Court.

And in all Caſes, it ſhall be in the Diſcretion of the Court, whether Performance *in Specie* ſhall be decreed, or not. *D. Gu. Ch.* 42.

And therefore, where an Agreement is ſuſpicious, the Court will not decree it, nor direct that it ſhall be ſurrendered, or cancelled. 2 *Ver.* 632.

[If an Agreement is not *certain*, *fair*, and *juſt*, in all Parts, this Court will not decree ſpecific Performance. *Buxton* v. *Liſter*, *T.* 1746. 3 *Atkyns* 383.]

[If Articles for Purchaſe of an Eſtate are obtained ſuſpiciouſly (as of a Man whoſe Speech is loſt, and Underſtanding impaired by the Palſy) tho' the Court will not ſet them aſide, yet it will not aid in carrying them into Execution; if the Vendee will give them up, he ſhall be allowed for laſting Improvements, but not if he proceeds at Law and fails. *Savage* v. *Taylor*: *H.* 10 *G.* 2. *C. T. T.* 234.]

[The Court will not decree a partial Performance of Articles; if any Part is very unreaſonable they diſmiſs the Bill: But in Caſe of Miſtake or Fraud, they go on other Ground, ſtriking out the Miſtake, or ſetting aſide the Fraud, and ſo relieving againſt the Settlement itſelf. *Going* v. *Naſh*, *M.* 1744. 3 *Atkyns* 180.]

[If a Bill is brought for ſpecific Performance, if the Act is impoſſible, the Court gives no Relief, but leaves the Party to his Remedy at Law. *Green* v. *Smith*, *M.* 1738. 1 *Atkyns* 572.]

[In general, this Court will not entertain a Bill for a ſpecific Performance of Articles for Chattels not affecting the Realty, or for Merchandiſe; but where the Agreement is not final, but to be made complete by ſubſequent Acts, a Bill to carry it into Execution will be allowed. *Buxton* v. *Liſter*, *T.* 1746. 3 *Atkyns* 383.]

[If an Uncle articles with his Nephew *A.* for Sale of a Copyhold, for an inadequate Conſideration, and *A.* agrees with *C.* for Sale of it for an inadequate Conſideration, and Uncle ſurrenders to *A.* and his Wife, and the Heirs of their Bodies, and Remainder to *A.* in Fee, the Court will not decree ſpecific Performance. *Underwood* v. *Hithcox*, *T.* 1749. 1 *Vezey* 279.]

[If *A.* undertakes to make out the Title of *B.* to an Eſtate, and is to have Part of the Lands, tho' the Agreement is artfully drawn by way of Wager of a Sum of Money, and the Land made only a Security for it, yet the Court will not decree a ſpecific Performance. *Powel* v. *Knowler*, *M.* 1741. 2 *Atkyns* 224.]

[But if *B.* afterwards by Will directs the Agreement to be carried into Execution, the Court will decree the Share to *A.* from the Time *B.*'s Poſſeſſion was quieted by Injunction, without Arrears of Rent. *Ibid.*]

[If there is an Agreement to pay a *compounded* Sum at a Day certain, and it is not paid, the Court will not relieve, but the whole Debt ſhall be paid. *Leigh* v. *Barry*, *M.* 1747. 3 *Atkyns* 583.]

[The Court will not decree ſpecific Performance of Covenants, for Repairs in old Church Leaſes, continued down without Variation in the Form. *Dean of Ely* v. *Stewart*, *T.* 1740. 2 *Atkyns* 44.]

[Specific Performance may be decreed againſt one become a Lunatick ſince the Agreement, if the legal Eſtate is in Truſtees. *Owen* v. *Davies*, *H.* 1747. 1 *Vezey* 82.]

[Performance ſhall be decreed tho' the Time is lapſed, eſpecially if the Non-performance has not ariſen by Default of the Party ſeeking Relief. *Penn* v. *Ld. Baltimore*, *P.* 1750. 1 *Vezey* 444.]

[Performance may be decreed, tho' the Court cannot inforce it *in Rem*, but only *in Perſonam*. Ibid.]

[If *A.* and *B.* execute Articles for Purchaſe of an Eſtate, with Proviſo, that if either Side break the Agreement he ſhall pay 100*l.* and *B.* being offered two

Years Purchaſe by another, accepts it, the Court will decree a ſpecific Performance. *Howard* v. *Hopkins*, *T.* 1742. 2 *Atkyns* 371.]

[The Rule is different as againſt Purchaſers, and between Relations, in which laſt the Court conſiders whether it will be attended with Hardſhips or not, or whether a ſuperior or inferior Equity ariſes on the Part of the Perſon applying for a ſpecific Performance. *Goring* v. *Naſh*, *M.* 1744. 3 *Atkyns* 180.]

[The Court will decree ſpecific Performance of Marriage Articles, even as to Collaterals. *Ibid.*]

[If on Marriage of a Daughter intitled to 500*l.* on her Father's Death, and to real Eſtate from her Mother, it is decreed the Father ſhall give her the 500*l.* in preſent, and the real Eſtate be ſettled to her and her Iſſue, then to her Siſter and Iſſue, then to the Father and his Heirs; the right Heir of the Father ſhall have a ſpecific Performance. *Stephens* v. *Trueman*, *H.* 1747. 1 *Vezey* 73.]

[On a Covenant to build, the Leſſors are intitled to come into this Court for a ſpecific Performance; but not on a Covenant to repair. *City of London* v. *Naſh*, *P.* 1747. 3 *Atkyns* 512. 1 *Vezey* 12.]

[On a Covenant to rebuild, rebuilding ſome Houſes, and repairing others, or pulling down fore and back Front and rebuilding, is not a Performance of the Covenant, for the Whole muſt be rebuilt. *Ibid.*]

[If the Leſſor has ſeen the Repairs going on for ſome Time, without making an Objection to it, he comes too late afterwards for ſpecific Performance, and the Court will only give Relief by an Iſſue to try the Damages. *Ibid.*]

If there is a Contract for *South-Sea Stock*, and the Defendant by his Anſwer offers to pay the Difference, the Court will not decree a ſpecific Performance. *Cont. per Maſter of the Rolls, but Acc. per Parker upon an Appeal*, 1 *P. W.* 570.

[On a Contract for a Stock, with a Depoſit forfeitable on Non-performance, no more than the Depoſit ſhall be recovered. *Shenton* v. *Jordan*, *T.* 1733. *Bunb.* 132.]

But if he demurs, or plead. the Statute of Frauds, That it was above 10*l.* it will be over-ruled. 2 *P. W.* 305.

So, if there is an Agreement for a Copyhold with Tenant for Life, and Part of the Money is paid, but before the Reſidue is paid, the Tenant for Life dies, his Executor ſhall return the Money received, altho' Delay of the Performance was by the Default of the Plaintiff. *R.* 1 *Ver.* 472.

If there is an Agreement for a Purchaſe, and Part of the Money is paid, and then an Order by Conſent is made, that the Reſidue of the Money ſhall be paid on ſuch a Day, or that the Money paid ſhall be loſt, and the Articles cancelled: If the Money is not paid at the Day, the Court will enlarge the Time; for the Order was only for Security of the Payment. 2 *P. W.* 66.

(2 C. 17.) In what Manner an Agreement ſhall be decreed to be executed.

An Agreement ſhall be decreed according to equitable Conſtruction, in Purſuance of the Intent of the Parties, and not according to the Words: As, if by Marriage Articles, the Father covenants, upon Payment of the Portion to him, upon the Marriage of his Son, that he will ſettle a Jointure upon the Wife and her Iſſue, and the Wife dies without Iſſue; the Father, having the Portion, ought to make a proportionable Settlement on his Son. *Semb.* 1 *Ver.* 199.

[If a Rector agrees with a Pariſhioner for a certain Sum, payable yearly at *Michaelmas*, and dies before it; his Executor ſhall have a Proportion of the Sum to the Time of his Death. *Anon. M.* 1730. *Bunb.* 294.]

[If a Man by Articles previous to his Marriage, agrees to ſettle Lands in *S.* to himſelf and Wife for Life, and the Life of Survivor, Remainder to the Heirs of their two Bodies begotten, with Remainders over, and afterwards makes a Settlement of theſe Lands *in the ſame Words*, and has Iſſue a Son and two Daughters, and on the Son's Marriage ſettles other Lands on him in the uſual Manner, and after the Son's Death levies a Fine of the Lands in *S.* to the Uſe of himſelf in Fee, and afterwards deviſes

deviſes theſe Lands to his Daughters, and all his other Lands to Truſtees for his Son's Son for Life, with uſual Remainders; the Grandſon is not bound by the Deed, which tho' in the ſame Words is of different Import to the Articles; but he muſt make his Election, and if he chuſes the Lands which ought to have been ſettled, his Aunts, (the Daughters) ſhall be repriſed out of the Lands deviſed to him. *Streatfield* v. *Streatfield*, *H.* 9 *G.* 2. *C. T. T.* 176.]

[If by Settlement before Marriage Securities are aſſigned to a Truſtee, to be laid out in Purchaſe of Freehold to be ſettled to the firſt Son in Tail Male, Remainder to ſecond and other Sons, Remainder to Daughters in Tail, and the Father and Mother die before the Money is inveſted in Freehold, leaving ſeveral Sons and Daughters; the Court will order the Money to be laid out in Land, and ſettled accordingly, in order to give the Remainder-men their Chance, unleſs they conſent in Court, and then it will order the Money to be paid to the eldeſt Son. *Collet* v. *Collet*, *P.* 1749. 1 *Atkyns* 11.]

[If a Man under Articles to purchaſe and ſettle, purchaſes but does not ſettle, they ſhall be decreed to be ſettled accordingly to make good the Articles; if Freehold, not if Copyhold. *Whorwood* v. *Univerſity College*, *T.* 1750. 1 *Vezey* 534.]

[If *A.* in Marriage Articles recites he is to be intitled to all *B.* his Wife's perſonal Eſtate; therefore, for further Proviſion, covenants, that for any Sum to come to her afterwards, he will make further Settlement in proportion of 100 *l.* for 1000 *l.* and if no Iſſue, then *B.* to be paid back half ſuch Sums as *A.* ſhould receive or become intitled to in her Right; and they bring a Bill for her Share of her Grand-Father's Eſtate, obtain a Decree, and *A.* is offered 400 *l.* by the Perſon in whoſe Hands it is, but refuſes to accept it, and does not act under the Decree, and dies without Iſſue; *B.* is intitled to 40 *l.* *per Annum*, and half of the 400 *l.* *Prime* v. *Stebbing*, *T.* 1752. 2 *Vezey* 409.]

If there be an Agreement for a Leaſe of Lands in the County of *N.* where the Leſſor uſually repairs, at 30 *l.* *per Ann.* without ſaying, who ſhall repair, if it appears that the Land is of greater Value, it ſhall be decreed, that the Leſſee ſhall take a Leaſe, and do the Repairs, and pay 30 *l.* *per Ann.* without Deduction, except for Taxes by Parliament. *R.* 2 *Ver.* 231.

[If on Application to the Court of Aldermen for Licence for *A.* to marry a City Orphan, they require him to take up his Freedom, and the Marriage takes Effect, but he dies without taking up his Freedom; the Court will direct his Eſtate to be diſtributed according to the Cuſtom, altho' there was another compleat Agreement between *A.* and his Father, and the Orphan and her Relations, previous to the Marriage, in which the Freedom is not mentioned. *Frederick* v. *Frederick*, *T.* 7 *G.* *Str.* 455.]

[If *A* Tenant for Life lets a Building-leaſe to *B.* for 61 Years, by virtue of an Act of Parliament, with Liberty to *B.* to quit after 20 Years, on Notice; but the Covenants uſual in Building-leaſes are not inſerted, and *B.* is expreſsly exempted from rebuilding in caſe of Fire; *B.* aſſigns to *C.* who builds, and pays Rent to *A.* till he dies, and then to *D.* his Son and firſt Remainder-Man in Tail, who accepts it during ſix Years, and then ejects for want of the uſual Covenants: This Court will order new Leaſe with the uſual Covenants, and decree quiet Poſſeſſion to *C.* *Stiles* v. *Cowper*, *H.* 1748. 3 *Atkyns* 692.]

[Contracts for Merchandiſe are to be conſtrued according to the Uſage of Trade. *Baker* v. *Paine*. *P.* 1750. 1. *Vezey* 456.]

So, if by Marriage Articles, it is covenanted that *A.* will ſettle an Eſtate, and by the Settlement ſhall covenant, that it is free from Incumbrances; if a known Incumbrance is upon the Eſtate, Equity will not inforce a Diſcharge of it, or a collateral Security to be given againſt it, before the Parties are thereby actually prejudiced; for by the Deed the Parties ſeemed to be content with their Covenant. *Eq. R.* 6.

So, if the Covenant is, that the Party ſhall covenant that *B.* ſhall enjoy free from Incumbrance. *Eq. R.* 8.

Otherwiſe, if the Incumbrance was concealed from the Parties, and afterwards diſcovered; for that is a Fraud. *Eq. R.* 7.

[Houſes

[Houſes purchaſed in *London* are not a Satisfaction of a Covenant in Marriage Articles; tho' Farm-Houſes, *&c.* which go along with the Eſtate, may. *Pennel* v. *Hallet*, *P.* 1751. 2 *Vezey* 276.]

[If *A.* covenants that 100 *l.* *South-Sea* Annuities, and a Note from *C.* ſhall be paid to *B.* if he ſurvives, and *A.* aliens Part of theſe Sums, he ſhall give Security that the Sums ſhall be forthcoming. *Flight* v. *Cook*, *T.* 1755. 2 *Vezey* 619.]

[If an Agreement to let Plaintiff into a Trade is decreed to be performed, the Court will not decree an Account of the Profits from the Time he ought to have been let in, tho' he might have had Damages for it at Law. *Anon.* *T.* 1755. 2 *Vezey*

[Articles of Agreement may be rectified by the Minutes. *Baker* v. *Paine*, *P.* 1750. 1 *Vezey* 456.]

(2 D.) Alimony.

(2 D. 1.) When it ſhall be decreed.

Vide Eq. Abr. 67. CHANCERY will compel the Huſband to give Alimony to his Wife. 1 *Ch. R.* 44, 164. *Dub. Eq. R.* 1. *Adm. cont. Eq. R.* 153.

Such Decrees were introduced in the Time of the Rebellion, and confirmed by the St. 12 *Car.* 2. 12. *ſ.* 1. for Confirmation of Judicial Proceedings. *R.* 1 *Ch. R.* 187, 224. 2 *Sho.* 282.

If the Wife is ſeparated by the Cruelty of the Huſband, and afterwards 6000 *l.* Part of her Portion, is prayed to be veſted in Lands, to be ſettled purſuant to Articles, upon the Huſband for Life, *&c.* the Court will direct, that they ſhall be ſettled for the ſeparate Uſe of the Wife, until Cohabitation. *R.* 2 *Ver.* 493.

[If *A.* marries *B.* with a good Fortune, and previouſly draws and gives her a Bond to ſecure 1700 *l.* if ſhe ſurvives; *B.* behaves indecently, *A.* uſes her cruelly, *B.* leaves him, *A.* breaks open her Cabinet and takes the Bond, *B.* brings Bill for ſeparate Maintenance, *A.* after Anſwer leaves the Kingdom; the Court will order what remains of the Wife's Fortune to be placed out in a Truſtee's Name, the Intereſt to be paid during the Joint Lives to the Wife for her Maintenance, till *A.* returns and maintains her, and 1700 *l.* to be ſecured for her if ſhe ſurvives. *Watkyns* v. *Watkyns*, *M.* 1740. 2 *Atkyns* 96.]

So, an additional Portion, which accrues to the Wife after Separation. *R.* 2 *Ver.* 671.

So, the Intereſt of a Bond for Part of the Portion where the Huſband is extravagant. *R.* 2 *Ver.* 752.

So, if the Huſband has a Truſt-Eſtate which remains under the Direction of *Chancery*, the Court will decree Alimony to the Wife, after a Divorce *propter Sævitiam*. *R.* 4 *An. Eq. R.* 1.

So, if there is an Agreement for a ſeparate Maintenance, *Chancery* will decree the Performance. *R. Eq. R.* 152.

[On a Bill to eſtabliſh an Agreement for ſeparate Maintenance, when the Wife has ſworn the Peace, and the Huſband by his Anſwer ſays he is deſirous of cohabiting, the Court will on Motion order him to pay a groſs Sum for the Time they have been ſeparate till the Anſwer came in; and this, abſtracted from the Decree that may be made. *Head* v. *Head*, *H.* 1745. 3 *Atkyns* 295.]

[If the Huſband ſays, by Letter to the Wife's Father, "I will allow ſo much "while we continue ſeparate," and the Huſband, under Pretence of Inſanity, has endeavoured to ſhut her up in a Madhouſe, and ſhe has thereupon obtained a *Supplicavit*, and the Huſband ſtill ſays he thinks her mad, and, if ſhe returns, ſhall treat her as ſuch, but ſtill offers to receive her; the Court will order the Arrears to be paid; if ſhe returns in a Month, the Maintenance to ceaſe; if ſhe returns, and he does not receive and treat her as a Wife, the Maintenance to continue. *Head* v. *Head*, *T.* 1747. 3 *Atkyns* 547. 1 *Vezey* 17.]

So an Agreement for Pin-Money ſhall be decreed to be performed.

And if the Huſband dies, the Pin-Money being in Arrear for a Year and 3 Quarters, the Arrears ſhall be decreed to the Wife. *R. Eq. Abr.* 140. *Vide Eq. Abr.* 66.

(2 D 2) When not.

But Alimony ſhall not be decreed, except where there is a Separation. *Ca. Ch.* 251. *Mo.* 874.

And if Alimony is decreed, it may be ſuſpended, if the Huſband by a new Bill offers Cohabitation. *Ca. Ch.* 251. *Eq. Ca.* 6.* *Eq. Abr.* 67.

* 2d Part of 2 *Mod. Ca.*

But ſuch Offer ſhall not diſcharge the Arrears of the Alimony. *R. Ca. Ch.* 251.

So, if the Huſband by his Anſwer offers Cohabitation, the Wife ſhall not be aided in a Settlement for Alimony, beyond what the Law will aid her. 1 *Ver.* 53.

Yet, if by Practice the Tenants ſurrender to avoid a Remedy by Law, the Court will give Relief, ſo far as to put her in *ſtatu quo, &c.* 1 *Ver.* 53

So, if there is an Agreement that the Huſband and Wife ſhall ſeparate, and the Huſband gives Security to repay the Portion to the Father of his Wife, being diſcharged from the Maintenance, and Debts of his Wife, and their Children, the Huſband ſhall not be relieved againſt that Security, upon an Offer of Cohabitation and Payment of the Maintenance 'till that Time. *R.* 2 *Ver.* 386.

[The Court cannot make a Decree eſtabliſhing a perpetual Separation between Huſband and Wife, or to compel him to pay her a ſeparate Maintenance, unleſs upon an Agreement between them, and then unwillingly. *Head* v. *Head*, *T.* 1747. 3 *Atkyns* 547. 1 *Vezey* 17.]

[In Caſe of Elopement and Adultery, the Court will not grant ſeparate Maintenance; but the Proof muſt be full. *Watkyns* v. *Watkyns*, *M.* 1740. 2 *Atkyns* 96.]

[Depoſitions to prove criminal Converſation cannot be read, unleſs it is charged in the Anſwer; but it is not neceſſary it ſhould be in groſs Terms. *Ibid.*]

(2 D 3.) When in the Eccleſiaſtical Court.

The Eccleſiaſtical Court is the more proper Court to decree Alimony. *Litt.* 78.

And therefore, where an Application was made for it to the Judges of Aſſize, they recommended it to the Biſhop. *Litt.* 78.

And if the Biſhop orders Alimony, which is confirmed by the Court of the Marches in *Wales*, the Confirmation is void. *Semb. Litt.* 79.

(2 E.) Apportionment.

IF Rent be reſerved upon a Leaſe, it may be apportioned in *Equity*, when it ſhall not by *Law*: As, if Common is recovered out of Part of the Land demiſed, tho' the Land itſelf is not evicted, yet the Rent ſhall be apportioned, if after the Recovery the Rent reſerved is too great. *Semb. Ca. Ch.* 31. *Vide Poſt*, (4N. 5.)

What ſhall be an Apportionment at Law, *vide Suſpenſion*, (E).

So, if a Parſon, Incumbent of a Rectory, and the Grantee of the next Avoidance, join in a Leaſe of Tithes, the Rent to be paid at *Eaſter* and *Martinmas*, and the Parſon dies before *Martinmas*, the Leſſee having collected the greateſt Part of the Tithes, Equity will apportion how much Rent ſhall be paid to the Executor of the Parſon, and how much to the Grantee. *Semb.* 2 *Ver.* 204.

If Monies are ſecured by Mortgage to be veſted in Land for him and his Heirs, and the intereſt, payable at *Lady-Day* and *Michaelmas*, to be paid to the Perſon intitled to the Land; if the Mortagee dies before *Mich.* tho' the Rent due at *Mich.* would have been all paid to the Heir, the Intereſt ſhall be apportioned between him and the Executor. 2 *P. W.* 176.

[But if Money ſettled to be laid out in Land, and till then to be veſted in *South Sea* Annuities, the Profits to go as the Rent of the Land would, and the Perſon who would be Tenant for Life dies in the Middle of a Quarter; there ſhall be no Apportionment of the Dividend. *Wilſon* v. *Harman*, *T.* 1755. 2 *Vezey* 672.]

If a Portion is bequeathed to a Daughter at the Age of 18, or Marriage, and a Maintenance of 80*l. per Ann.* in the *interim*, by half-yearly Payments at *Lady-*

Day and *Michaelmas*, and ſhe arrives at the Age of 18 on the 16th of *Auguſt*; her Maintenance ſhall be apportioned and paid up to the 16th of *Auguſt*. *R.* 2 *P. W.* 501.

But if a Man ſettles a Rent-charge for the Jointure of his Wife, and afterwards deviſes Part of the Land to her, without ſaying, that it ſhall be in Lieu of any Part of the Rent; the Rent ſhall not be apportioned. *R.* 1 *Ver.* 347.

If a Man deviſes to *A.* in Tail, Remainder to *B.* and if the Eſtate comes to *B.* he ſhall pay 1000*l.* to his Daughters; if *A.* ſuffers a Recovery of a Moiety, and then dies without Iſſue, whereby the other Moiety comes to *B.* he ſhall pay the whole 1000*l.* and it ſhall not be apportioned; for the Daughters claim *Paramount* to *A.* who ſuffered the Recovery. 2 *Ver.* 360.

When there ſhall be an Extinguiſhment, *Vide Poſt*, (4 N. 6, 8, 9.)

(2 F) Appointment.

(2 F. 1.) What ſufficient to charge Land.

ANY Signification of an Intent, to make a Charge upon Land is ſufficient to ſubject the ſame Land to other equitable Charges: As, if a Man deviſes that his Wife ſhall have Land in *B.* to the Value of the Portions charged upon her Jointure, if ſhe pleaſes; if ſhe refuſes, *&c.* the Portions ſhall be charged on the Land in *B.* *R.* 2 *Vent.* 363.

[If a Wife has a Power, in caſe ſhe ſurvives her Huſband, and has no younger Children, to diſpoſe of 4000*l.* charged on real Eſtate, by Writing executed before three Witneſſes, and before her ſecond Marriage appoints, before two Witneſſes only, 2000*l.* to the Uſe of her intended Huſband; the Court will ſupply this Defect, as it is for valuable Conſideration, and only the Execution of a Truſt. *Sergiſon* v. *Sealey*, *M.* 1742. 2 *Atkyns* 412.]

[But if the Appointment is by Will, before two Witneſſes only, as it is voluntary and without valuable Conſideration, it is void, and the Money ſinks into the real Eſtate. *Ibid.*]

If a Man ſettles Land for the Jointure of his Wife, and agrees that ſhe ſhall have the Land, 'till his Heir pays 100*l.* to her Executors, Adminiſtrators, or Aſſigns; if ſhe by Will in the Life-time of her Huſband, gives the 100*l.* to *A.* it ſhall be a good Appointment. 1 *Ver.* 244, 5.

If a Man upon his Marriage ſettles Land to the Uſe of himſelf for Life, and afterwards to his Wife for Life, Remainder to the Heirs of his Body by his Wife, Remainder to his own Right Heirs; Proviſo, that if there is no Iſſue of their Bodies, *B.* the Feoffee ſhall convey as the Survivor ſhall appoint; this operates as a Proviſo to revoke, and limit new Uſes; and *B.* ſhall convey as the Wife ſurviving appoints, tho' the Huſband by his Will had deviſed the Land to other Uſes. *R.* 2 *Ver.* 376.

If there is a Deviſe to Truſtees to convey to an Infant and his 1ſt, 2d and other Sons in Tail, and if he dies without Iſſue, that *B.* ſhall have the Eſtate for Life, and afterwards *A.* ſhall have it to him and his Heirs, but if *A.* dies before the Eſtate devolves to him, it ſhall be conveyed to his Heir, if *A.* deviſes it by his Will it ſhall be a good Appointment, and the Deviſee ſhall have it. *Per King*, *C. Temp. Geo.* 2. 8.

[If *Feme-covert*, having Power to receive Profits of an Eſtate to her ſeparate Uſe, brings Bill jointly with her Huſband for Account, and ſubmits they ſhall be applied to pay his Debts, and it is decreed accordingly, it is a good Appointment. *Allen* v. *Papworth*, *M.* 1748. 1 *Vezey* 163.]

(2 F. 2.) What Appointment to the Perſon is ſufficient.

So, if a Man bequeaths the Goods of ſuch a Houſe to *A.* for Life, and afterwards to the Heir of *B.* and by the ſame Will in another Part mentions the Perſon, who was the Heir; the Executor of ſuch Heir, if he dies before *A.* ſhall take, and not he who was Heir at his Death. *R.* 1 *Ver.* 35.

If a Term is aſſigned to *A.* for Life, and afterwards to his Iſſue, the Term ſhall not all be in *A.* for by the Appointment to the Iſſue, all the Iſſues take by Purchaſe. 2 *Ver.* 24.

So, if a Term, upon Marriage, is aſſigned in Truſt for the Huſband for 99 Years, if he live ſo long, and afterwards to the Heirs of the Body of the Huſband by his Wife; the Huſband doth not take the whole Term, but it ſhall be an Appointment to the Iſſues of the Husband and Wife. *R.* 2 *Ver.* 23.

So, if upon a Marriage, a Term is aſſigned to the Husband for Life, then to the Wife for Life, and afterwards to the Heirs of the Body of the Wife by her Husband, the Words *Heirs of the Body of the Wife* are an Appointment to the Iſſues of the Marriage, who ſhall take, and the Eſtate does not veſt in the Wife. *Cont. per Lord Chancellor Jefferies, but the Decree was reverſed by the Lords Commiſſioners, and the Reverſal affirmed in Parliament.* 2 *Ver.* 43, 196. *R.* 2 *Ver.* 362.—Otherwiſe, if it had been to the Heirs of the Body of the Husband and Wife. *R. Cont. per Maſter of the Rolls, but upon Appeal R. Acc.* 2 *Ver.* 668.

But a Limitation of the Truſt of a Term for Years to the Heir of the Termor, after a Limitation to one not *in eſſe*, does not amount to an Appointment of the Truſt to the Heir; but it reverts to him who made the Truſt. *Ca. Ch.* 8.

If a Woman, before her Marriage with *A.* covenants to ſtand ſeiſed, to the Uſe of herſelf in Tail, and afterwards to ſuch Uſes as ſhe ſhall appoint, and, for Default of ſuch Appointment, to *B.* her Couſin; and by her Will ſhe appoints the Eſtate to *A.* and his Heirs; this, being a void Uſe in Law, ſhall not be decreed, as an Appointment in Equity. *R.* 2 *Ver.* 8. But a *Qu.* is there made.

[If *A.* ſuffers a Recovery, and declares it ſhall enure to the Uſe of himſelf, his Heirs and Aſſigns, *and* to ſuch Uſes, *&c.* as he by Will ſhall appoint, and by Will he appoints to the Uſe of *B.* and *C.* this is good, and not a Uſe upon a Uſe; for *and* ſhall be conſtrued *or*. *Dobbins* v. *Bowman*; *M.* 1746. 3 *Atkyns* 408.]

(2 F. 3.) When it ſhall be defeated.

[If a Father having Power to appoint 3000*l.* among his younger Children, appoints 2900*l.* to one, ſubject to certain Deviſes in his Will; it is a void Appointment, for he cannot annex a Condition. *Pawlet* v. *Pawlet*, *T.* 21 & 22 *G.* 2. 1 *Wilſ.* 224.]

If there is an Appointment, it may be defeated by Matter *ex poſt Facto*: As, if Truſtees have a Power to diſtribute 4000*l.* *amongſt younger Children*, in ſuch Proportion as *A.* ſhall appoint; *A.* appoints 2000*l.* to the ſecond Son, and afterwards the Eſtate comes to him by the Limitations of the Settlement; tho' the Appointment was good, when made, yet it is defeated by the Deſcent of the Eſtate; for the ſecond Son had a defeaſible Capacity, and took *ſub Modo*, *viz.* as a Younger Child, but by the Deſcent of the Eſtate, he became Eldeſt Son, within the Intent of the Settlement. *Per Lord Keeper Cowper*, *H.* 4 *Ann. in Sir Thomas Dolman's Caſe*, 2 *Ver.* 528.

So, if no Appointment is made, the Court will make an Appointment.

And, if Diſtribution is to be made to the Children of *B.* after the Death of *A.* in ſuch Manner as *A.* appoints, who dies without making any Appointment, and ſome of the Children of *B.* are dead leaving Iſſue; the Court will direct a Diſtribution *per Stirpes*, and not *per Capita*. 2 *Ver.* 50.

[If a Man leaves 600*l.* to his Wife, to be by her diſpoſed of among his three Daughters, in ſuch Proportion, and payable in ſuch Manner, as ſhe thinks fit, and ſhe gives 200*l.* thereof to her Daughter *A.* who is dead, it is void, even if *A.* had left Children. *Maddiſon* v. *Andrew*, *M.* 1747. 1 *Vezey* 57.]

[For Default of Appointment of the Whole or any Part, ſuch unappointed Part goes equally among thoſe alive at the Mother's Death. *Ibid.*]

[The diſcretionary Power of a Parent to appoint does not devolve on the Court for want of Appointment. *Ibid.*]

(2 G) Aſſets.

(2 G. 1.) What ſhall be.

WHAT Things ſhall be ſaid to be Aſſets at *Law*, *Vide in Aſſets*.

[An Advowſon in Fee in Groſs is real *Aſſets* by Deſcent. *Robinſon* v. *Tonge*, *M.* 4 *G.* 2. *Str.* 879. 3 *P. W.* 398. Q. If it is extendible. *Weſtfaling* v. *Weſtfaling*, *H.* 1746. 3 *Atkyns* 460.]

[A Fire-engine ſet up for the Benefit of a Colliery by Tenant for Life is perſonal Eſtate, and ſhall go to the Executor: ſo a Cyder-mill let in very deep into the Ground. *Lawton* v. *Lawton*, *M.* 1743. 3 *Atkyns* 13.]

[An Office (as Houſekeeper of the Palace and Houſe of Lords) granted for Years is liable to Debts, and a Fee, being an Allowance by Lord Chamberlain's Warrant, for particular Purpoſes is Part of the Office, tho' a voluntary Grant of the Crown, and tho' it may be varied. *Schellenger* v. *Blackerby*, *M.* 1749. 1 *Vezey* 347.]

[If *A.* Tenant for Life, Remainder to his Sons in Tail, Remainder to his Nephew *B.* in Tail, Remainder over, lets in *B.* immediately, on his agreeing to permit *A.*'s Appointee to receive the Rents for as long Time after *A.*'s Death as he *B.* ſhall enjoy them during *A.*'s Life; this is Part of *A.*'s general Aſſets, tho' he has appointed to a Daughter unprovided for, and *B.* ſhall ſuffer a Recovery. *Ld. Townſhend* v. *Windham*, *T.* 1750. 2 *Vezey* 1.]

If a Man dies ſeiſed of an Eſtate in Land, to him and his Heirs, lying in the foreign Plantations, it ſhall be Aſſets. *R.* 2 *Vent.* 358. 2 *Ca. Ch.* 145.

If an Executor puts out Money of the Teſtator at Intereſt, the Intereſt received ſhall be Aſſets. *Cont.* for the Executor was at the Hazard of loſing the Principal. 2 *Ca. Ch.* 35. *R. Acc.* 2 *Ca. Ch.* 152.

If a Man purchaſes Land, in another's Name, in Truſt for him and his Heirs, it ſhall ſhall be Aſſets in Equity in the Heir. *R. Cont. per* 3 *Judges*, tho' the Truſt was decreed to the Heir. *Ca. Ch.* 14.—*R. Cont. upon Demurrer*, *Ca. Ch.* 128. *Dub.* 1 *Ver.* 173.

But now by the St. 29 *Car.* 2. 3. A Truſt in Fee-ſimple is made Aſſets, ſo that the Heir, by falſe Plea, Confeſſion, or *nihil dicit*, *&c.* ſhall not be liable to the Debt out of his own Eſtate.

R. That it is Aſſets in Equity. 2 *Ch. R.* 145.

If Land is conveyed in Fee in Truſt for *A.* and his Heirs, and a Term for Years is conveyed to *A.* in Truſt to attend the Inheritance, this Term ſhall be Aſſets for the Debts of *A.* 2 *Ca. Ch.* 49, 152. *Acc.* If no Truſt of the Term is declared. 1 *Ver.* 188, 9. 340, 1. *Eq. Abr.* 241.

So, if the Inheritance is conveyed to *A.* himſelf, and the Term is aſſigned to a Stranger upon Truſt to attend the Inheritance, the Term ſhall be Aſſets for the Debts of *A.* *R.* 2 *Ca. Ch.* 152. *Cont.* 2 *Ca. Ch.* 49. *Acc.* 1 *Ver.* 1, 104. *Semb. Ch. R.* 64. *Vide Poſt*, (4 W. 22.)

If a Man by Covenant, *&c.* binds his Heir, and afterwards conveys Land to his Heir in Fee; it ſhall be Aſſets in Equity. *R.* 1 *Ch. R.* 18.

If a Man deviſes Lands, to his Executor, for the Payment of Debts, they are Aſſets. 1 *Ver.* 64. *Vide Poſt*, (3 A. 3, *&c.*)

[If an Executor is alſo made Truſtee in a Deviſe for Payment of Debts, the Aſſets ſhall be equitable, and the Creditors paid *pari paſſu*. *Lewin* v. *Okely*, *T.* 1740. 2 *Atkyns* 50.

If Tenant in Tail levies a Fine and makes a Mortgage for 1000 *l.* and afterwards deviſes his Lands in the ſame County for Payment of Debts; a Term in Truſt to attend the Inheritance, ſhall be Aſſets, if the Fine does not declare the Uſes after the Mortgage paid, to be to the former Uſes. 1 *Ver.* 100.

If a Copyhold is ſurrendred to the Uſe of a Man's Will, and he deviſes it to his Executrix for Life, paying his Debts, and that ſhe ſhall pay 50 *l.* to his Heir; the Whole ſhall be Aſſets for Payment of Debts, and the Executrix may ſell to ſuch Intent. *R.* 1 *Ch. R.* 203.

[If

[If a Copyholder in Tail accepts a Grant from the Lord, of the Freehold and Fee-ſimple, the Intail is extinct, and the Eſtate is Aſſets by Deſcent. *Dun* v. *Green*, *T.* 1724. 3 *P. W.* 9.]

If a Term, for raiſing a Portion for *A.* is merged by the Deſcent of the Inheritance, it ſhall be revived for the Benefit of Creditors. *R.* 2 *Ver.* 91, 208.

If there is a Mortgage in Fee, and the Equity of Redemption deſcends to the Heir, it ſhall be Aſſets in Equity. *Dub. Ca. Ch.* 148. 1 *Ver.* 410, 411. *R.* 2 *Ver.* 55. 61, 2.

[If one poſſeſſed of a Term for Years, mortgages it, and dies, leaving Bond and ſimple Contract Debts; the Equity of Redemption is equitable Aſſets, and liable to all the Debts equally. Caſe of Sir *Charles Cox*'s Creditors, *M.* 1734. 3 *P. W.* 341.]

[But where a Bond is given to *B.* in Truſt for *A.* or if a Term of Years be taken in the Name of *B.* in Truſt for *A.* it ſhall be paid in a Courſe of Adminiſtration. *Ibid.*]

[If a ſimple Contract Creditor obtains a Decree that he and the Reſt of the Creditors ſhould come in before the Maſter, and be paid all their Debts; a Bond Creditor coming on the Foot of the Decree ſhall be paid only *pro Rata* with the ſimple Contract Creditors. *Ibid.*]

[And *ſemb. per Jekyll M. R.* if Bond Creditor having Notice of ſuch Decree and Advertiſement in Gazette, ſhall lie by, and afterwards bring Action againſt Executor; tho' Executor could not defend himſelf at Law, yet Equity would aſſiſt him, and compel the Bond Creditor to accept in Proportion with ſimple Contract Creditors. *Ibid. Sed quære.*]

[If *A.* by Articles on his Son *B.*'s Marriage covenants in three Years to pay 12,000 *l.* to be ſettled to *B.* for Life, to his Wife for Life, to Sons in Tail Male, to Daughters in Tail general; provided, if no Child but one Daughter, and *B.*'s Heirs ſhould in three Months after his Death pay 4000 *l.* to Truſtees, then the Uſes limited to the Daughter and her Heirs in the 12,000 *l.* to ceaſe, and to be to *B.* his Heirs and Aſſigns: *B.* dies, leaving only one Daughter, and deviſes the 12,000 *l.* ſubject to the Truſts to *A.* and makes him Executor, and he does not pay the 4000 *l.* in three Months; yet the reverſionary Intereſt of *B.* in the 12,000 *l.* and the Right of redeeming it by the Payment of 4000 *l.* ſhall be real Aſſets, and liable to the Payment of a Judgment Creditor. *Fredrick* v. *Aynſcombe*, *M.* 1739. 1 *Atkyns* 392.]

If a Man articles for the Purchaſe of Land, the Money ſhall be decreed for the Purchaſe for the Benefit of the Heir. *R.* 1 *Sal.* 154.

But, if there is a Deficiency of Perſonal Aſſets for Payment of Debts upon ſimple Contract, *&c.* the Money ſhall be Aſſets in the Hands of the Executor for that Purpoſe. *Semb.* 1 *Sal.* 154.

[An Eſtate made ſubject by Will to a Term for Payment of Debts, muſt firſt be applied before Creditors can come on the Eſtate deſcend to the Heir at Law. *Powis* v. *Corbet*, *T.* 1747. 3 *Atkyns* 556.]

[Aſſets deſcendible on the Heir at Law muſt be applied before Lands ſpecifically deviſed. *Ibid. Chaplin* v. *Chaplin*, *T.* 1735. 3 *P. W.* 365.]

[A Man cannot poſſibly raiſe a Fee-ſimple to his own right Heirs, by the Name of Heirs, as a Purchaſe, ſo as to prevent the Reverſion being Aſſets. *Godolphin* v. *Abington*, *M.* 1740. 2 *Atkyns* 57.

[If Adminiſtrator *de bonis non* finding the Outgoings of a College Leaſe to exceed the Profits, neglects to renew, and ſuffers the Heir at Law of Teſtator (whoſe Lands lie intermixed with the Leaſehold) to renew, ſuch Heir will be liable to pay the Debts if the Reſt of the perſonal Eſtate falls ſhort. *Semb.* for the Leſſee in a new Leaſe, taking in the Right of the old, muſt take it, ſubject to all the Equity to which the original Leſſee was liable. *Edwards* v. *Lewis*, *T.* 1747. 3 *Atkyns* 538.]

[If *A.* gives ſeveral Legacies, and makes *B.* Executor and Reſiduary Legatee, and he receives all the Aſſets, and with the Money buys Land, and alſo the Equity of Redemption of an Eſtate on which Teſtator had a Mortgage, and dies, the Lands and the Equity of Redemption ſo purchaſed ſhall be Aſſets, and liable to the Legatees of *A.* *Ryall* v. *Ryall*, *H.* 1739. 1 *Atkyns* 59.]

So, if a Mortgage be to *A.* and his Heirs, for the Life of *B.* upon Condition, that if *B.* pays 100 *l.* it ſhall be void; this Eſtate *pur auter vie* would have been Aſſets for the Executor of *A.* before the *St.* 29 *Car.* 2. 3. 1 *Ch. R.* 39.

[An Eſtate *pur autre vie*, tho' it is deviſed, is liable to Specialty Debts; for the Deviſe is void by the Statute of fraudulent Deviſes. *Weſtfaling* v. *Weſtfaling*, *H.* 1746. 3 *Atkyns* 460.]

If an Heir ſold the Eſtate deſcended before any Action commenced, the Money would have been Aſſets in Equity, before the *St.* 29 *Car.* 2. *Dub.* 1 *Ver.* 282.

So, if the Heir, for Money, releaſe his Equity of Redemption, the Money is Aſſets. 2 *Ver.* 62.

If by Marriage Articles Money is to be veſted in a Purchaſe for the Huſband and Wife, and their Children, afterwards to the Heirs of the Huſband; after the Death of the Huſband and Wife without Iſſue, the Money is Aſſets, and goes to the Executor, or Reſiduary Legatee. *R.* 2 *Ver.* 295.

If a Huſband aſſigns an Eſtate, to which his Wife was intitled as Executrix, to Truſtees to the Uſe which he ſhall appoint, and afterwards by his Will deviſes it to his Wife and Children; it ſhall be Aſſets in the firſt Place for the Payment of his Debts, and the Wife and Children take only as Legatees. *R.* 2 *Ver.* 287.

If *B.* upon a Purchaſe from *A.* gives a Bond to pay 500 *l.* as *A.* ſhall appoint, who by his Will appoints the 500 *l.* to be paid to his Relations; the 500 *l.* ſhall be Aſſets for the Creditors of *A.* for he had the Diſpoſition of it. *R.* 2 *Ver.* 319, 465.

[If by Articles before Marriage of *A.* and *B.* it is agreed that 300 *l.* ſhall remain charged on Land till laid out in purchaſe of Lands to be ſettled to *A.* for Life, to *B.* for Life, and if no Children, as *B.* ſhall direct, and *B.* directs it to *A.* to be employed in charitable or other Purpoſes, as he thinks fit, and *A.* diſpoſes of it by Will to three poor Clergymen's Children, in purſuance of his Wife's Directions; yet it is Aſſets, and liable to *A.*'s Debts. *Hinton* v. *Toye*, *M.* 1739. 1 *Atkyns* 465.]

So, if *A.* by Marriage Settlement reſerves 3000 *l.* to be at his own Diſpoſal, and by Will gives it to his Daughter. *R.* 2 *Ver.* 465.

[If a Man having a Power to charge his Wife's Eſtate with 2000 *l.* by Will gives 500 *l.* apiece to his two Siſters, yet the whole 2000 *l.* ſhall be liable to his Debts. *Bainton* v. *Ward*, *P.* 1741. 2 *Atkyns* 172.]

[If a Man has a Power to diſpoſe of a Reverſion in Fee, and makes no Diſpoſition of it, yet it ſhall be Aſſets to ſatisfy Specialty Creditors. *Ibid.*]

[If *A.* on Marriage ſettles his Eſtate on himſelf for Life, his Wife for Life, Remainder to preſerve, *&c.* Remainder to his firſt and other Sons in Tail Male, Remainder to himſelf in Fee, and there is Iſſue a Son, and *A.* dies indebted by Bond, and then the Son dies without Iſſue, having deviſed the Eſtate to *B.* in Fee; this Reverſion in Fee now come into Poſſeſſion is Aſſets to pay the Bond Debts of *A.* *Kinaſton* v. *Clark*, *T.* 1741. 2 *Atkyns* 204.]

[If a Man after Marriage, yet in Conſideration of a Portion paid at the Time, ſettles Lands to himſelf for Life, his Wife for Life, and his Son in Tail and afterwards makes a Purchaſe jointly with his eldeſt Son, and then another jointly with his youngeſt Son, paying the whole Purchaſe-Money, and long after gives a Judgment, and dies, leaving other Land mortgaged, the mortgaged Premiſſes ſhall be ſold, and the Money applied, firſt to pay the Mortgage, and then the Judgment, and if not ſufficient, a Moiety of the two joint Purchaſes ſhall be ſold and applied to pay the Judgment, and the Surplus, if any, paid to the two Sons reſpectively. *Stileman* v. *Aſhdown*, *M.* 1742. 2 *Atkyns* 477. *T.* 1743. 2 *Atkyns* 608.

[If a Man has Power to charge a Sum on Land by Deed or Will, and executes it by a voluntary Deed, it is perſonal Aſſets, and his Sons in Law claiming under Settlement before Marriage are not intitled to the Benefit of it. *Pack* v. *Bathurſt*, *T.* 1745. 3 *Atkyns* 269.]

[If a Perſon has a general Power to appoint to Uſes, it is his abſolute Eſtate, and ſhall be ſubject to his Debts. *Troughton* v. *Troughton*, *H.* 1747. 3 *Atkyns* 656.]

If a Term for Years is bequeathed, and the Executor aſſents to the Bequeſt, yet this Term ſhall be Aſſets in the Hands of the Legatee to ſatisfy the Debts of the Teſtator. *R. Ca. Ch.* 257.

Otherwiſe, if the Legatee ſells it, for a valuable Conſideration, it ſhall not be Aſſets in the Hands of the Purchaſer; for he hath a good Title in Law, and ſhall not be prejudiced by a ſecret Truſt for Creditors. *Ca. Ch.* 257.

(If *A.* mortgages his Eſtate to *B.* who gives no Money for it, but a Bond, and *A.* dies, and makes *B.* his Executor, the Bond, tho' extinguiſhed at Law, ſhall be Aſſets in Equity. *Fox* v. *Fox*, *M.* 1737. 1 *Atkyns* 463.]

[If after a Bidder for an Eſtate under a Decree is confirmed the beſt Purchaſer, he is kept out of Poſſeſſion ſome Time by a Mortgagee, and in that Time ſeveral Lives fall in, whereby the Value of the Eſtate is greatly increaſed, the Court will order a further Sum to be paid by the Purchaſer. *Davy* v. *Barber*, *M.* 1742. 2 *Atkyns* 489.]

(2 G. 2.) What not.

But if an Executor takes a new Bond to himſelf for a Debt of the Teſtator, he ſhall not be compelled to pay the Money, but only to aſſign the new Security to the Heir. *R. Ca. Ch.* 74.

If an Executor gives his Recognizance to pay Creditors, and Houſes of *London* are burnt down by Fire, by which the greateſt Part of the Aſſets is loſt; there ſhall be no Remedy, upon the Recognizance, above the Value of the Aſſets which remain, 2 *Ver.* 57. *Vide Eq. Abr.* 85.

If a Factor ſells the Goods of his Principal, and afterwards lays out the Money in other Goods; theſe ſhall not be Aſſets for the Payment of the Debts of the Factor.

So, if a Factor ſells Goods for *A.* and dies before Payment; nothing but the Factorage ſhall be Aſſets; for the Money belongs to *A.* for whom the Factor was only a Truſtee. *R.* 2 *Ver.* 638.

So, if a Term is granted to *B.* who re-demiſes it to *A.* at a Pepper Corn Rent during his Life, and afterwards at 1500 *l. per Ann.* during the Life of his Wife, for her Jointure, and afterwards at a Pepper Corn during the Reſidue of the Term; the Term ſhall not be Aſſets, being created for a ſpecial Purpoſe, but for Specialties, which charge the Inheritance. *R.* 2 *Ver.* 58, 215.

[If *A.* having a Church-leaſe, on Renewal inſerts his Brother *B.*'s name with his own, *A.* paying the Fine and Rents, and receiving the Profits, if it is proved by one Witneſs that he intended *B.* ſhould have the Survivorſhip, it ſhall not be Aſſets. *Maddiſon* v. *Andrew*, *M.* 1747. 1 *Vezey* 57.]

[But if *A.* makes a voluntary Settlement, reſerving a Power to charge it with 1000 *l.* and by his Will leaves a Legacy of 300 *l.* to be paid by his Executor, chargeable on all his real and perſonal, and the Perſonal is inſufficient, this ſhall be Aſſets tho' *A.* doth not refer to the Power. *Ibid.*]

If a Term is agreed, upon a Marriage, to be renewed, and aſſigned to the ſame Truſts, and *A.* renews, but does not aſſign the Term; it ſhall not be Aſſets for the Debts of *A.* but is aſſignable to the Truſts. *R.* 2 *Ver.* 289.

If a Reverſion deſcends to an Heir as Aſſets, after Judgment againſt the Heir, he ſhall not be compelled in Equity to ſell the Reverſion, 'till it comes into Poſſeſſion. *R.* 2 *Ver.* 134.

If *A.* ſells Lands, and Part of the Purchaſe Money is left in the Hands of the Purchaſer, which *A.* afterwards appoints to be paid to *B.* and dies; this Money is not Aſſets in the Hands of the Executor of *A.* 3 *Ch. R.* 3.

[If *A.* binds himſelf and Heirs in a Bond, and mortgages Land for more than the Value, and the Heir has 200 *l.* for joining in Sale of the Premiſſes, the 200 *l.* is not Aſſets. *Dun* v. *Green*, *T.* 1724. 3 *P. W.* 9.]

If Tenant for Life, Remainder to his eldeſt Son in Tail, Remainder to Himſelf in Fee, deviſes the Lands for Payment of his Debts, and dies, and afterwards the eldeſt Son levies a Fine, by which the Fee and Tail are conſolidated; the Rents due in the Life-time of the Son, are not Aſſets, after his Death, for the Debts of the Tenant for Life. *R. Eq. Abr.* 140.

[If

[If *A.* Tenant in Tail in Remainder, in his Father's Life-time limits the Lands on his Marriage, and covenants after his Father's Death to ſuffer Recovery to the ſame Uſes, with Power to revoke and create new, which he afterwards does, and ſuffers Recovery, declaring the Uſes to Truſtees for himſelf for Life, to Truſtees to preſerve, *&c.* to raiſe Portions, and to his firſt and other Sons in Tail-male, *&c.* theſe Lands were never Aſſets of *A.* nor are liable to Debts by Specialty, tho' they would to ſuch Debts as are ſpecific Liens. *Brown* v. *Durſton*, *H.* 1747. 3 *Atkyns* 631.]

[If Tenant for Life aſſigns Rents and Dividends for 21 Years, in Truſt to pay a Debt to *A.* by Inſtalments, and if he dies before all the Debt is paid, then the Truſtee to apply the Reſidue of the Rents and Dividends due at making the Aſſignment, and accruing due afterward, towards Satisfaction for the Reſidue of the Debt. Theſe Arrears are not Aſſets, but *A.* has a ſpecific *Lien* on them. *Ld. Townſhend* v. *Windham*, *T.* 1750. 2 *Vezey* 1.]

[If Part Owners of a Ship, *A.* being one, enter into Agreement impowering *A.* to contract for building, *&c.* a Ship for them, with covenant to bear proportional Shares of Expences, and *A.* dies inteſtate, his Share ſhall not go into his general Aſſets, but the other Part Owners have a ſpecific *Lien* thereon, for what they have paid or ſhall pay for building and equipping the Ship. *Doddington* v. *Hallet*, *T.* 1750. 1 *Vezey* 497.]

[If *A.* lends *B.* 500*l.* on his Note, he aſſuring him that his Aunt had left him 4000*l.* which Chancery had decreed him; but it appears that this 4000*l.* was directed to be laid out in Land, and was ſo decreed, the Repreſentative of *B.* is not obliged to pay it. *Trelawny* v. *Broth*, *P.* 1742. 2 *Atkyns* 307.]

[Lands in *Ireland* are not liable, except Banker's Lands for their Notes. *Cox* v. *Bateman*, *T.* 1750. 2 *Vezey* 19.]

(2 G. 3.) Bill for Diſcovery of Aſſets.

So, if there be a Bill againſt an Executor or Adminiſtrator for Diſcovery of Aſſets, it ought to charge, that Aſſets or Goods of the Teſtator came to his Hands. *R. upon Demurrer*, *Ca. Ch.* 226. *Vide Poſt*, (3 B. 1.)

If an Executor aſſigns Part of the Perſonal Eſtate to another, a Creditor may purſue it againſt the Aſſignee. 2 *Ver.* 76.

So, tho' one Executor admits Aſſets, there ſhall be an Account againſt another, who does not admit them. 2 *P. W.* 145.

[Admiſſion of Aſſets, by Executor, to one Legatee, is an Admiſſion to all. *Cook* v. *Martyn*, *P.* 1737. 2 *Atkyns* 2.]

[On a Bill for Diſcovery of Aſſets and Satisfaction; if Teſtator has given Judgment for his Daughter's Portion, which he articled for before Marriage, that Judgment ſhall have Preference. *Ld. Townſhend* v. *Windham*, *T.* 1750. 2 *Vezey* 1.]

[If Teſtator has given Judgment for the Balance of an Account ſtated between him and his Son-in-Law and Executor, a few Days before his Death, the Maſter ſhall inquire what Debts, *&c.* and the Judgment ſtand as a Security for the Balance, with Preference, and Executor may retain. *Ibid.*]

(2 G. 4.) If the Aſſets are exhauſted by a Debt upon Security, *that* ſhall come in Aid.

If a Man is indebted to the King and others, and his Perſonal Aſſets do not ſuffice for the Whole, the Debt to the King ſhall be charged upon the Land whereby the Perſonal Aſſets may remain for the other Creditors. 1 *Ver.* 455.

If there is a Mortgage and Debts upon Specialty, and the Executor pays the Mortgage out of the Perſonal Aſſets; the other Creditors ſhall have the Advantage of the Mortgage, for ſo much as was applied thereto out of the Perſonal Eſtate. *R.* 2 *Ver.* 273, 763.

So, Creditors upon ſimple Contract. *R.* 2 *Ver.* 763. *R. Eq. Ca.* 151.*

* 2d Part of 2 *Mod. Ca.*

If

If a Man, having a Statute or Recognizance, takes all the Perſonal Aſſets, and does not reſort to the Land, whereby the Aſſets fail for Creditors and Legatees; the Land ſhall be charged to that Amount for the other Creditors and the Legatees; for the Land was the principal Security. 2 *Ver.* 182. 3. 477.

So, if *A.* executes a Judgment upon the Perſonal Aſſets only, and not upon the Land, tho' both are charged. *Semb. per Hutchins,* 2 *Ver.* 182, 3.

So, if *A.* has a Mortgage and a Recognizance for Performance of Covenants, and executes the Recognizance upon the Perſonal Eſtate, whereby the younger Children of the Mortgagor become deſtitute of any Proviſion. *R.* 2 *Ver.* 309.

But if *A.* is Surety for *B.* to *C.* and a Term is aſſigned to *A.* for his Security, and afterwards *B.* dies, and makes *A.* his Executor, who pays *C.* out of the Perſonal Aſſets; the other Creditors ſhall not have the Benefit of this Term. *R.* 2 *Ver.* 36.

If *A* makes a Settlement to the Uſe of his Wife for Life, Remainder to *B.* in Tail, with a Power of Revocation; *B.* is the Heir at Law and ſells to *C.* the Eſtate of *C.* is not liable to the Creditors of *A.* 2 *Ver.* 44.

If *A* makes a Mortgage to *B.* and then ſettles his Eſtate upon his Son in Tail, and afterwards mortgages to *C.* who knew not of the prior Mortgage, and dies, and his Adminiſtrator pays off the prior Mortgage; he ſhall not be allowed it againſt *C.* *R.* 2 *Ver.* 305.

If *A.* makes an expreſs Deviſe of an Eſtate in Mortgage, to a younger Son, and afterwards computes his Perſonal Eſtate to be 5000 *l.* and gives Legacies to his younger Children to that Amount, and directs that, if his Perſonal Eſtate falls ſhort, there ſhall be a Deduction in Proportion, and that the Surplus ſhall go to them in the ſame Proportion; the Mortgage ſhall be paid out of the Perſonal Eſtate, tho' the other Legatees are thereby obliged to abate. 2 *Ver.* 477.

[Aſſets ſhall not be marſhalled to ſupport a Legacy contrary to Law, as if Teſtator deviſes real Eſtate to be ſold, and the Money applied to Charities, and directs Debts and Legacies to be paid out of Perſonal, the Court will not order them to be paid out of the real, and the Perſonal to go to the Charity. *Mogg* v. *Hodges,* *M.* 1750. 2 *Vezey* 52.]

[If *A.* agrees to purchaſe Lands, and dies before he has paid the whole Purchaſe-money, and by his Will, after leaving 800 *l.* to *B.* his Siſter, gives the purchaſed Lands, and all his perſonal Eſtate to *C.* his Executor, who commits *Devaſtavit* and dies, and the Lands deſcend to *D.* his Son, the Vendor ſhall take Satisfaction on the Lands, that *B.* may be paid out of the perſonal Aſſets. *Pollexfen* v. *Moore, H.* 1745. 3 *Atkyns* 272.]

[Simple Contract Creditors cannot ſtand in the Place of *every* Specialty Creditor to affect real Aſſets, but only of ſuch as had Remedy againſt both real and perſonal Aſſets of the Debtor deceaſed. *Lacam* v. *Mertins, M.* 1749. 1 *Vezey* 312.]

[Therefore if a Woman in her Huſband's Life-time levies a Fine of her Eſtate, making it ſubject to 2000 *l.* his Debt, and after his Death borrows 400 *l.* more, and charges the Eſtate with it; the ſimple Contract Creditors ſhall come on the real Eſtate for the 400 *l.* ſatisfied out of the Perſonal, but not for the 2000 *l.* which was not the Wife's Debt. *Ibid.*]

(2 H.) Aſſignment; What ſhall be a good one.

What good in Law, or not, Vide in Aſſignment.

AN Aſſignment ſhall be allowed in Equity, which is not good at Law; as, if an Adminiſtrator of a Conuſee aſſign a Statute before it is extended. 2 *Vent.* 362.

So, a *Choſe in Action* is aſſignable in Equity, upon a Conſideration, by him who has the Intereſt in it, and the Aſſignee ſhall recover it in *Chancery.* *Ca. Ch.* 169. 2 *Ver.* 595. 2 *P. W.* (608).

And the Releaſe afterwards of the Aſſignor does not diſcharge it, unleſs it was made upon a Conſideration paid by the Releaſee, without Notice of the Aſſignment. *Ca. Ch.* 169.

So an Adminiſtrator, who has alſo the Intereſt in the *Choſe in Action,* may aſſign it; as, a Husband, who takes Adminiſtration to his Wife, may aſſign the Money due for the Marriage Portion of his Wife. *R. Ca. Ch.* 169.

[If *A.* and *B.* are two Executors, reſiduary Legatees, and *A.* for valuable Conſideration aſſigns *Part* of his *Reſiduum* to *C.* and afterwards for valuable Conſideration aſſigns his whole reſiduary Share to *B.* without Notice, yet as it is but a *Choſe in Action* even to the Executor, the firſt Aſſignment muſt take place. *Tourvill* v. *Naiſh*, *T.* 1734. 3 *P. W.* 307.]

[If an Executor aſſigns over a Mortgage of his Teſtator's to his own Creditor in Satisfaction of a Debt due from him, it is a good Alienation, and the Daughters of Teſtator's Creditors under a Settlement cannot follow it. *Nugent* v. *Giſſard*, *M.* 1738, 1 *Atkyns* 463.]

[If *A.* a Banker having a Mortgage dies, leaving a Widow and five Children, and appoints the Widow, his eldeſt Son *J.* and another Perſon, Executors, and deviſes to them all his real and perſonal Eſtate, in Truſt to pay Debts, and the Reſidue to be equally divided between his Children; after Payment there is a large Reſidue; the Mortgage is left in a Maſter's Hands in a Suit; the Children come of Age; *J.* is appointed Receiver of a great Eſtate of *B.* the Caſh of which is kept at the Shop; he with the other two Executors, no ways concerned in Intereſt, aſſign the Mortgage to the Maſter as a Security for his Receiverſhip, reciting, that the Money due was the Money of *J.* and he dies indebted to the Eſtate, the Aſſignment ſhall not be ſet aſide, and the Executors of *B.* ſhall have the Benefit of it for what is due on the Receiverſhip. *Mead* v. *Orrery*, *T.* 1745. 3 *Atk.* 235.]

[An Aſſignment by an Executor for a valuable Conſideration is never ſet aſide but for Fraud between the Executor and Aſſignee. *Ibid.*]

So, a Husband, who has it in Right of his Wife, tho' it be only a Poſſibility or a Contingency. 2 *P. W.* (608).

But an Aſſignment of a *Choſe in Action* by an Adminiſtrator, who has not any Intereſt in it, ſhall not be decreed. *Semb. Ca. Ch.* 169.

[If *A.* inſures a Houſe for ſeven Years, and his Term expires before the Inſurance, and afterwards the Houſe is burnt, and *then* he aſſigns the Policy to *B.* the Landlord *B.* ſhall not recover againſt the Inſurers. *Sadlers Company* v. *Hand-in-Hand Fire-Office*, *P.* 16 *G.* 2. *Wilſ.* 10.]

So a Poſſibility may be aſſigned, or diſpoſed of in Equity; as, the Remainder of a Truſt of a Term for Years may be transferred to another. *Ca. Ch.* 8. 1 *Ch. R.* 29. *Cont.* 2 *Ver.* 563. *Eq. Ca.* 103. 1 *P. W.* 572, 6. *Vide Poſt*, (4 W. 21).

[If a Man deviſes Lands to his two Daughters and their Heirs, if either marry without Conſent, ſhe to have only Eſtate for Life; if either die unmarried, his Son *A.* or his Heirs ſhall take it to him and his Heirs, paying 500*l.* to the other Daughter: *A.* in the Life of both Siſters conveys theſe Lands, and all others to which he had any Claim, *&c.* to his ſecond Son, and *A.* dies, and then one of the Siſters unmarried; this is a good Aſſignment, tho' the Word *Poſſibility* is omitted: And the eldeſt Son of *A.* cannot have the Lands on paying the 500*l.* *Wright* v. *Wright*, *H.* 1749. 1 *Vezey* 409.]

So, if Land, *&c.* is deviſed for Payment of Portions, *&c.* and the Surplus to the Heir; he by Will or Deed may diſpoſe of the Surplus. *R. Ca. Ch.* 211.

So Debts may be aſſigned by *Parol* upon a Conſideration. *Dub.* 2 *Ca. Ch.* 7, 37.

So an Aſſignment of Seaman's Wages before they are due, tho' a *Choſe in Action*, ſhall be good in Equity; and there ſhall be a Compenſation for the Money advanced for the Aſſignment, before other Debts of the Aſſignor. *R.* 2 *Ver.* 595. *Semb. cont.* 2 *Ver.* 391.

So an Aſſignment of a Debt in *Holland*, between Huſband and Wife, ſhall be allowed here, becauſe it is good there. *Ca. Ch.* 232.

So, if *A.* aſſigns Goods and Debts to *B.* and the Adminiſtrator of *A.* aſſigns his Letters of Adminiſtration to *B.* his Intereſt in the Debts, *&c.* is aſſigned, and the Adminiſtrator *de bonis non*, *&c.* are afterwards excluded. *Skin.* 232.

So. if after an Aſſignment of a Debt, or other *Choſe in Action*, the Aſſignor releaſes to the Debtor, who has Notice of the Aſſignment; this does not hurt the Aſſignee. *Vide Ca. Ch.* 169.

So, if a Creditor gives a Letter of Attorney to *A.* who receives the Debt for Satisfaction of a Demand of his own upon good Conſideration; it ſhall be void, if he had Notice of an Aſſignment. *Ca. Ch.* 232.

But

But if a Debtor pays to an Attorney, having a Letter of Attorney from the Creditor, without Notice of an Aſſignment; it ſhall be a good Plea. *R. Ca. Ch.* 232.

So an Aſſignee ſhall be ſubject to the ſame Equity, with regard to the Thing aſſigned, as the Aſſignor was. 2 *Ver.* 692, 765.

[If a Leſſee, who has covenanted not to aſſign without Leave for himſelf and Executors, but not for Aſſigns, becomes Bankrupt, and the Leaſe is aſſigned, the Aſſignee is not bound by the Covenant, and may aſſign. *Philpot* v. *Hoare*, *M.* 1741. 2 *Atkyns* 219.]

[But if the under Aſſignee is inſolvent, does not reſide on the Premiſſes, nor plow and ſow, refuſes to ſhew the Aſſignment, and Leſſor has accepted no Rent, the Court will ſet aſide the Aſſignment.]

If a Termor grants the Land to *A.* and his Wife, to the Uſe of *B.* for Life, and afterwards to the Heirs of his Body, and for Default of Iſſue to *A.* for 800 Years, nothing paſſes; becauſe no Eſtate is limited to *A.* and his Wife, and the Term for 800 Years after the Death of *B.* without Iſſue will be void. 2 *Ver.* 684.

[An Aſſignment by the Clerk of the Peace to Creditors, under an inſolvent Debtor's Act, need not be ſealed. *Barret* v. *Powell*, *H.* 1741. 2 *Atkyns* 242.]

[If *A.* Tenant for Life is diſcharged under an Inſolvent Act by the compulſory Clauſe, and not by his own Claim, yet the Eſtate in Tail veſts in the Aſſignee. *Smith* v. *Cooke*, *T.* 1746. 3 *Atkyns* 378.]

[If *A.* indebted to *B.* gives him a Draft on a Fund, due to him out of the Exchequer; this is a good Aſſignment, and ſhall prevail againſt Aſſignees of *A.* become Bankrupt. *Row* v. *Dowſon*, *M.* 1749. 1 *Vezey* 331.]

[If the Obligee delivers a Bond, ſaying, "In caſe I die it is yours, and then "you will have ſomething," it is a ſufficient *Donatio Cauſa Mortis*, and paſſes the equitable Intereſt of the Bond after the Death. *Snellgrove* v. *Bailey*, *H.* 1744. 3 *Atkyns* 214.]

(2 I.) Average.

CHANCERY will inforce an Average, or Contribution to be made, where it is neceſſary. *Ca. Parl.* 19. *Vide Poſt*, (2 S)

And therefore, if ſome Goods are thrown overboard in a Tempeſt for the Preſervation of others, the Owner ſhall have Contribution of all the Goods ſaved by that Means, whereby the Loſs of every one will be equal. *Mo.* 297.

So, if ſome Goods are given to a Pirate, or Enemy, who had taken the Ship, by way of Compoſition, for the Redemption of the Reſt. *Mo.* 297.

So, if Merchants agree to pay an Average, when Goods are ſpoiled, *&c.* in Caſes where an Average is not requiſite, it ſhall be decreed. *R. Mo.* 297.

So Creditors and Legatees, *&c.* ought to make Contribution, or Abatement in Proportion.

If *A.* deviſes his Real Eſtate to his Son, and a Term to his Daughter, and there are Bonds and other Debts, but no Perſonal Aſſets; the Son and Daughter ſhall pay, in Proportion to the Value of the Eſtate of each of them. *R.* 2 *Ver.* 756.

[Tenant for Life of an Eſtate for the Lives of others ſhall pay One-third of the Fine and Charges of Renewal of the Leaſe, and the Remainder-man in Tail Two-thirds. *Verney* v. *Verney*, *P.* 1750. 1 *Vezey* 428.]

If an Eſtate ſubject to the Payment of Debts is deviſed to *A.* for Life, Remainder to *B.* in Fee; the Tenant for Life, who takes the Profits, ought to diſcharge the Intereſt. *R.* 2 *Ver.* 566.

So, a Huſband, who has Land in Right of his Wife ſo ſubject. *Dub.* 2 *Ver.* 566.

So, if a Portion is charged to be raiſed by a Term upon Eſtates in *A.* and *B.* after two Lives; the Eſtate in *A.* comes into Poſſeſſion, and the Owner to prevent the Sale of the Term upon his Eſtate pays the whole Portion; he ſhall have Contribution againſt the Owner of the Eſtate in *B.* *R.* 2 *Ver.* 355.

But Average ſhall not be paid, except when ſome Goods are *loſt* for the Salvage of the others: And therefore, if ſome Goods are damaged in the Ship, the others ſhall not be contributory to the Damage. *Ca. Parl.* 20.

So, if ſome of the Goods are taken by Violence of Pirates, the others ſhall not be contributory. *Mo.* 297.

So, if upon Apprehenſion of Enemies, ſome Goods are conveyed to Land and ſecured, and the Reſt are taken; the Owner of the Goods taken ſhall not have Average of the Goods ſaved; for the Salvage of theſe is not the Cauſe of the Taking of the Reſt, neither was the Taking of thoſe the Cauſe of the Salvage of the Goods, which were ſecured. *R. Ca. Parl.* 20.

Altho' the Goods ſaved were not more ready to be ſecured, but were preferred, as being of the moſt Value. *Ca. Parl.* 20.

So there ſhall be no Average, when the other Goods are not ſaved by that Means; as, if ſome Goods are thrown overboard for the Salvage of the Ship, but afterwards the Ship is loſt, without arriving at a Port. *Vide Ca. Parl.* 20.

Vide Poſt, (2 S.)

(2 K.) Award.

(2 K. 1.) When it ſhall be confirmed.

Vide Arbitrament.

CHANCERY will confirm an Arbitrament made purſuant to an Order of the Court. *Ca. Ch.* 86.

And may confirm it in Part, and make it void in Part. *Ca. Ch.* 40.

So *Chancery* will inforce an Award, made on Submiſſion of the Parties, without an Order of the Court. 1 *Ch. R.* 85, 142. *R.* 2 *Ch. R.* 304. 2 *P. W.* 450.

[If an Award is made a Rule of *B. R.* which Court refuſes to ſet it aſide on one Hand, or to grant an Attachment on the other, ſo that one Party is left to his Action on the Bond, this Court will conſider the other as left at Liberty to ask Relief by Bill. *Ward* v. *Periam*, 1720. cited by Lord *Hardwicke*, in *Chicot* v. *Lequeſne*, *T.* 1751. 2 *Vezey* 315.]

[If a Submiſſion be by Rule of *B. R.* and Umpirage made thereon, and no Application to that Court within the Time limited by Statute, yet Equity may take Cognizance of it after the Time elapſed. *P.* 2. *Barons cont.* 1. *Alardes* v. *Campbell*, *P.* 1729. *Bunb.* 265.

[If a Bill is brought to ſet aſide an Award, made a Rule of *B. R.* for Fraud, and Defendant pleads the Award, but by his Anſwer ſubmits to amend Errors, the Court will order the Plea to ſtand for Anſwer, tho' the proper Proceeding ſhould have been in *B. R.* by ſhewing Cauſe againſt the Rule for Attachment. *Kampſhire* v. *Young*, *H.* 1740. 2 *Atkyns* 155.]

Tho' the Award was defective, becauſe Land was awarded to *A.* where it was intended to be, to Him and his Heirs, as appeared by the Depoſitions of all the ſurviving Arbitrators. 1 *Ch. R.* 85.

Tho' the Award was made by the King. 1 *Ch. R.* 138.

Tho' the Award was not good, *ex rigore Juris*. *R.* 2 *Ver.* 25.

So, if an Award is concerning a Leaſe to *B.* that the Leſſee ſhould ſurrender, or aſſign it to *A.* and for many Years *A.* hath the Enjoyment of it, tho' *B.* will not aſſign, the Award ſhall be confirmed and an Injunction granted againſt *B.* 3 *Ch. R.* 20.

[The Court will decree the ſpecific Performance of an Award to convey an Eſtate, where the Party ſubmitting has received the Money, the Conſideration for doing it. *Hall* v. *Hardy*, *T.* 1733. 3 *P. W.* 187.]

[If an Award directs that the Debts due from the Parties jointly ſhall be paid by them in Moieties, and then mentions three ſuch Debts only, the Court will not make a Preſumption that there are more. *Lingood* v. *Eade*, *M.* 1742. 2 *Atkyns* 501.]

If an Award directs the Debts due to the Parties jointly to be paid to them in Moieties, it is ſufficient; and tho' it recommends to them to appoint a Receiver,

and if they do not, requeſts the Court to do it, it ſhall not be avoided; for it is not a Delegation of their Power, but a Recommendation; and if the Parties do not comply, it is Surpluſage. *Ibid.*]

[If the Award directs the Parties to give general Releaſes, it is good, tho' it ſays the Form to be ſettled by the Maſter, if the Court pleaſes to give Directions. *Ibid.*]

(2 K. 2.) When it ſhall be avoided.

(2 K. 2.) If it be unreaſonable.

So, if an Award made by the Order of the the Court is unreaſonable, *Chancery* will avoid it; as, if it be awarded, that a Guardian ſhall give Bond that the Infant at full Age ſhall convey. *R. Ca. Ch.* 280.

Or, if the Award in any Caſe binds an Infant. *Ca. Ch.* 280.

If the Award is, that Tenant in Tail ſhall not diſcontinue, without the Aſſent of him in Remainder, except for the Jointure of his Wife. 1 *Ch. R.* 143.

If it appears, that the Arbitrators miſtook the Fact, or the Law. *R.* 2 *Ver.* 705.

[If there is a palpable Miſtake or Miſcalculation, the Party aggrieved may bring a Bill againſt the other Party, and not againſt the Arbitrator. *Anon. T.* 1748. 3 *Atkyns* 644.]

[It is improper to come into this Court to ſet aſide an Award merely for an Objection in Point of Form. *Lingood* v. *Eade, M.* 1742. 2 *Atkyns* 501.]

[This Court will not take greater Latitude in determining Awards than Courts of Law. *Ibid.*]

[If Part of the Evidence is not ſhewn to one of the Arbitrators, and he ſwears if he had ſeen it he would not have made the Award, it ſhall be ſet aſide. *Medcalfe* v. *Ives, T.* 1737. 1 *Atkyns* 63.]

But where an Award does not appear to be partial or unfair, tho' it is for the Profits or Poſſeſſion of Lands, the Court neither vacates or confirms it, but uſually ſends the Parties to Law. 2 *Ch. R.* 34.

So *Chancery* admits Exceptions, tho' the Reference is by Order of the Court, with a Clauſe that the Award ſhall be confirmed by the Court without Appeal, or Exception. 2 *Ver.* 109.

[If *A.* by Articles previous to Marriage, agrees to veſt 1000*l.* in Truſtees for certain Uſes, and then to the Iſſue of the Marriage, and gives Warrant of Attorney to confeſs Judgment, which is entered up, and afterwards *A.* enters into Partnerſhip with *B.* and being indebted to Partnerſhip Eſtate, ſubmits to Arbitration, and Award is made that Part of the Stock in Trade ſhall be lodged in the third Perſon's Hands for certain Purpoſes, and the Truſtees bring *Scire Facias* on the Judgment, and take a Moiety of the Depoſit in Execution as the Property of *A.* the Execution ſhall not be ſet aſide. *Thompſon* v. *Noel, P.* 1738. 1 *Atkyns* 60.]

(2 K. 3.) Or, made without Aſſent of Parties.

So, if an Arbitrament is made without the Aſſent of ſome of the Parties, tho' his Solicitor aſſents. *R. Ca. Ch.* 87. 1 *Ch. R.* 195.

[If one of the Parties hearing that Arbitrator intends to make his Award, deſires him to defer it till he can talk with him to ſupport ſtated Accounts, notwithſtanding which he makes his Award, the Time expiring in two or three Days, the Court will ſet aſide the Award. *Spetigue* v. *Carpenter, T.* 1735. 3 *P. W.* 361.]

[Arbitrators are not bound to give Notice of the Time when, or Place where, they intend to meet. *Tittenſon* v. *Peat, T.* 1747. 3 *Atkyns* 529.]

(2 K. 4.) If made only for Part.

So, if an Award is made only for Part of the Matters referred. *R. Ca. Ch.* 87, 186.

(2 K. 5.) If it be repugnant.

So, if an Award is repugnant. *R. Ca. Ch.* 87.

Or, impoſſible. *R. Ca. Ch.* 87.

And therefore, the Court may examine the Reaſons and Grounds of the Proceeding of the Arbitrators, and what Matters they conſidered. *R. Ca. Ch.* 186.

If there is a Submiſſion to a Reference, by the Order of the Court, the Submiſſion is revocable. *R. Ca. Ch.* 185.

But a Revocation without Cauſe will be a Contempt of the Court. *Ca. Ch.* 185.

(2 K. 6.) If made by Corruption or Partiality.

So, if an Award is made upon a private Submiſſion without an Order of Court, *Chancery* may avoid it, if it was made by Corruption. *R. Ca. Ch.* 279.

Or, if it exceeds the Authority. *Ca. Ch.* 279.

So, if an Umpire, before the Time of the Referees is elapſed, declares he will give ſo much, and afterwards does give ſo much, which was more than was demanded by either Referee, the Award ſhall be avoided; for it induces a Preſumption of Corruption. 2 *Ver.* 100.

[If an Arbitrator makes an improper Declaration, as that he will make *A.* pay Coſts, or that *A.* having miſuſed *B.* he will now mulct him in his Repreſentatives, he ſhall pay Coſts. *Ward* v. *Periam*, 1720. *Chicot* v. *Lequeſne*, *T.* 1751. 2 *Vezey* 315.]

If an Arbitrator promiſes to hear Witneſſes, and afterwards refuſes, or omits to do it. 2 *Ver.* 251.

If a Reference is to three, or any two of them, and two, without the other, agree to make an Award. 2 *Ver.* 514.

If the Arbitrators admit and hear one Party, and refuſe the other. 2 *Ver.* 515.

So, if an Arbitrator is a Party who has an Intereſt in the Matter in Queſtion, 2 *Ver.* 251.

Or, is a near Relation to one of the Parties. 2 *Ver.* 251.

Or, if they chooſe an Umpire by Lot. 2 *Ver.* 485.

But it ſhall not be avoided, becauſe it is not reaſonable; for the Parties have ſubmitted to the Judgment of the Arbitrators. *Ca. Ch.* 279. *Semb.* 1 *Rol.* 380.

Or, gives exceſſive Damages, if no Corruption or Partiality is proved. *R.* 2 *Ca. Ch.* 140. 1 *Ver.* 157.

Tho' one Party was not heard, if he had Opportunity, and neglected to be heard. *R. Eq. Ca.* 63.*

* 2d Part of 2 *Mod. Ca.*

So it ſhall not be avoided, becauſe the Submiſſion being between *A.* and *B.* Executors of *C.* of the one Part, and *D.* of the other Part, the Award was that *A.* having a Judgment againſt *C.* in his Life-time, which he had extended againſt *D.* the Terre-tenant, ſhould acknowledge Satisfaction upon the Judgment, whereby *B.* the other Executor would be diſcharged thereof as well as *D.* for the Submiſſion warrants an Arbitrament of Demands between *A.* and *B.* as well as of Demands which *A.* and *B.* have jointly, or ſeverally againſt *D.* *Semb.* 1 *Ver.* 259.

Nor, becauſe the Arbitrators referred it to others, by the Aſſent of the Parties to make a Valuation of Improvements upon Land. 1 *Ch. R.* 141.

And now by the St. 9 & 10 *W.* 3. 15. In Matters in which there is no Remedy, but by Perſonal Action or Suit in Equity, Parties may agree, that their Submiſſion to an Award be made a Rule of any of his Majeſty's Courts of Record, and inſert ſuch Agreement in their Submiſſion, *&c.* which Agreement ſo inſerted ſhall on *Affidavit* read and filed in Court, be made of Record, and a Rule of Court, ſhall be, that the Parties be concluded by ſuch Award, and if they refuſe to obey it, Proceſs of Contempt to a Rule of Court ſhall iſſue, and not be ſtayed by any other Court of Law or Equity, unleſs it appear on Oath, that the Arbitrators miſbehaved themſelves, and ſuch Award was procured by Corruption, or other undue Means; but an Award by Corruption or undue Means ſhall be ſet aſide by any Court of Law or Equity, ſo as Complaint be made in Court, where the Rule was for ſuch Submiſſion, before the laſt Day of the next Term after the Award publiſhed.

And therefore, a Submiſſion to an Award ſhall be made a Rule of a Court of Equity, as well as of the Courts of Law.

But a Court of Equity will inforce the Performance only by Attachment, which Remedy fails if the Defendant dies. 2 *Ver.* 444.

(2 L) Bankrupts.

(2. L. 1.) When Chancery aids.

CHANCERY will compel every Perſon concerned in the Eſtate of a Bankrupt to make a Diſcovery to the Aſſignee of the Commiſſioners; *Vide Bankrupt.*

Tho' he was Servant to the Bankrupt, and had given an Account to him, and was examined before the Commiſſioners. *R. upon a Plea of ſuch Matter, and the Plea over-ruled,* 2 *Vent.* 358. *Semb.* 2 *Ca. Ch.* 73.

[Bill lies for Aſſignee of a Bankrupt for Delivery of Goods pledged by the Bankrupt, notwithſtanding Statute of Limitations, and alſo as he has a Right to come here to know what is due, that he may make a Tender. *Kemp.* v. *Weſtbrook, T.* 1749. 1 *Vezey* 278.]

But to a Bill for Diſcovery it is a good Plea, that the Defendant was a Purchaſer *bona fide,* before the Commiſſion iſſued, without Notice of any Act of Bankruptcy. *R.* 2 *Ca. Ch.* 73. *R. ibidem* 135, 136, 156. *Skin.* 149.

[If Bankrupt, whoſe Eſtate is in Mortgage, conveys the Equity of Redemption to a third Perſon, after Act of Bankruptcy, but before Commiſſion, this ſhall not defeat the Aſſignees, but Mortgagor ſhall reconvey to them, on Payment of Principal and Intereſt. *Collet* v. *De Gols, H.* 8 *G.* 2. *C. T. T.* 65.]

Yet, if the Plaintiff will enter his Conſent with the Regiſter, not to take Advantage of the Diſcovery at Law, the Defendant ſhall ſhew, what Goods he purchaſed, and for what Price. 2 *Ca. Ch.* 156, 7.

And if the Purchaſe was for a ſmall Value, the Plea ſhall not be allowed. 2 *Ca. Ch.* 156.

So it will be a good Plea to a Bill for Diſcovery of the Land of a Bankrupt, that the Defendant was a Purchaſer *bona fide* for the valuable Conſideration, before Commiſſion, and without Notice. *R.* 2 *Ca. Ch.* 136.

So *Chancery* will hear Proof of a Debt, if the Commiſſioners diſallow it. *Ca. Ch.* 275.

So it will direct a Diſtribution of a Debt recovered by the Aſſignees, to the Creditors of the Bankrupt, if the Aſſignees are in fault. *Ch. R.* 264.

Or, diſallow a fraudulent Diſtribution; as, if made before the Land or Effects were ſold. *Per* 2 *Commiſſioners, Rawlinſon cont. Vide* 2 *Ver.* 162.

Or, allow Perſons to come in for a Diſtribution, where they ought to have it, tho' diſallowed by the Commiſſioners. *Ch. R.* 467.

And enlarge the Time for coming in for a Diſtribution, as to the Plaintiff and others, not Parties to the Suit, if they contribute afterwards their Share of the Expence of the Suit. *Ch. R.* 359.

So, if there is a Commiſſion againſt Partners, *Chancery* allows, after the joint Debts are ſatisfied, the ſeparate Creditors, of each Partner, paying Contribution, to have Relief under the ſame Commiſſion, out of the ſeparate Eſtate of each Bankrupt. *R.* 2 *Ver.* 293, 706.

So, upon a Commiſſion at the Petition of the ſeparate Creditors of one Bankrupt, after their ſeparate Debts are ſatisfied, the joint Creditors of him and the other Partner ſhall have Relief for ſo much as the joint Stock does not ſatisfy. 2 *Ver.* 706.

So *Chancery* will aid a Creditor of a Bankrupt, being an Aſſignee of Stock before the Bankruptcy, tho' only the Day before; for there may be a Reaſon for the Preference of one Creditor before another. *R.* 2 *P. W.* 430.

[If *A.* after ſecret Act of Bankruptcy pays Money (without Fraud, and before the Commiſſion) to *B.* againſt whom the Aſſignees recover it at Law, *B.* ſhall in this Court be allowed the Sums he paid *A.* during the ſame Period, notwithſtanding this Claim was over-ruled at the Trial. *Billon* v. *Hyde M.* 1749. 1 *Vezey* 326.]

[If there is a Decree for a Receiver to collect Partnerſhip Debts, and that *A.* one of the Partners, ſhall not diſpoſe of any of the Stock, and the Morning of the Decree he removes Part of it, and then becomes Bankrupt, and the Aſſignees get Poſſeſſion of it; the Court will order them to deliver it up to the Receiver, and all

all others who have taken any Effects or given Notes ſince the Decree, tho' it is not actually paſſed. *Skip.* v. *Harwood, T.* 1747. 3 *Atkyns* 564.]

[A Bill may be brought for ſettling the Demands of Creditors, tho' the Court would have had the ſame Power on a Petition, and the Rule of Determination muſt be the ſame on both. *Bromley* v. *Goodere, M.* 1743. 1 *Atkyns* 75.]

[The Repreſentatives of a Bankrupt are bound by the Proof of the Debts before the Commiſſioners, unleſs Objection made in a reaſonable Time. *Ibid.*]

(2 L. 2.) When not.

But *Chancery* will not relieve Creditors, who do not come before the Commiſſioners in due Time,

Tho' there was an Agreement between the Bankrupt and all the Creditors, and upon Breach of the Agreement by the Bankrupt, ſome of his Creditors ſue out the Commiſſion without the others. *R. Ca. Ch.* 19.

Yet after Time elapſed, where there was a Pretence that the Plaintiff had a Judgment executed before the Bankruptcy, if the Plaintiff brings the Money levied to the Commiſſioners and pays Contribution, he ſhall be admitted. *R. Ch. R.* 60.

So, if Creditors in *London* agree with Creditors in the *Country*, that, if they will relinquiſh Goods ſold to them by the Bankrupt, there ſhall be a Commiſſion, and an equal Diſtribution amongſt them all, and afterwards execute a Commiſſion in *London*, and make a Diſtribution without Notice to them in the *Country*. *R. Ch. R.* 326.

Chancery will not relieve, if the Party is not a Bankrupt at Law; for that Queſtion is properly triable at Law. 2 *Ca. Ch.* 153.

So *Chancery* will not aid the Aſſignees of Bankrupts againſt a Purchaſer of the Bankrupt without Notice of the Bankruptcy. *R.* 2 *Ver.* 599.

[If a Bankrupt's Eſtate in Mortgage becomes veſted by meſne Aſſignments in another, who after the Bankruptcy, but before the Commiſſion, gets a Releaſe of the Equity of Redemption from the Bankrupt, he is as a Purchaſer for a valuable Conſideration; and the Court will not take Advantage of him, nor grant a Diſcovery againſt him. *Collet* v. *De Gols, H.* 8 *G.* 2. *C. T. T.* 65.]

[If there are mutual Demands, Defendant at Law may ſet off his Demand againſt Plaintiff, under *ſtat.* 5 *G.* 2. *c.* 30. and need not come into Equity. *Look* v. *Bennet, T.* 1740. 2 *Atkyns* 49.]

[If a Man has a ſpecific Lien upon the Stock of a Bankrupt, he ſhall have Satisfaction firſt, and not be obliged to come in as a Creditor. Thus a Partner ſhall have his Share before the ſeparate Creditors of the other Partner can affect the Stock, and this notwithſtanding any Agreement to diſſolve the Partnerſhip, unleſs the Conditions were performed by the Bankrupt. *Weſt.* v. *Skip, P.* 1749. 1 *Vezey* 239.]

[The Commiſſioners may proceed *ex parte* without Order, if the other Party does not attend. *Ex parte Bax, T.* 1751. 2 *Vezey* 388.]

[If Commiſſioners certify *ex parte* that Objections to their Certificate were waived by Objector's Counſel, the Exception ſhall be over-ruled. *Ibid.*]

(2 M) Baron and Feme.

(2 M. 1.) Suit by them.

WHEN Huſband and Wife ſhall join in a Suit, and when either of them ſhall ſue alone, *Vide Baron and Feme*, (V. &c.)

Regularly Huſband and Wife ought to join in a Suit.

[Bill by Husband and Wife, he claiming in her Right, is to be conſidered as Bill of the Husband. *Pawlet* v *Delaval.* 2 *Vezey* 663.]

[If *Feme-covert* ſues with her Husband for her ſeparate Eſtate, the Court will order Payment to a Truſtee for her. *Griffith* v. *Hood, T.* 1752. 2 *Vezey* 452.]

But

But, if a *Feme Covert* demands Relief, for a ſeparate Maintenance ſettled by Huſband, ſhe may ſue alone. *R. upon Demurrer, Ca. Ch.* 35.

So any one may exhibit a Bill for a *Feme Covert*, as *prochein Amy*.

But upon her *Affidavit*, that the Bill was brought without her Conſent, it ſhall be diſmiſſed. *M.* 1713. *Eq. Abr.* 72.

[A *Feme-covert* may have Leave to change her *Prochien amy*, after Progreſs in the Cauſe, the new one entering into Recognizance to anſwer Coſts, and abide Order on Hearing. *Lady Lawley* v. *Halpen*, *M.* 1731. *Bunb.* 310.]

(2. M. 2.) Suit againſt them.

When they ſhall be joined in a Suit, and when not, *Vide Baron and Feme* (Y.)

If a *Subpæna* is taken out againſt Husband and Wife, Service upon the Huſband, with Notice, that it was alſo againſt his Wife, is ſufficient. *Vide Practical Regiſter in Chancery* 343.

And if the Husband appears, but not the Wife, an Attachment goes againſt both. *Ib.*

Or by Order of the Court, it may be againſt the Wife alone, where the Huſband pleads in the Name of himſelf and his Wife, and ſwears to the Plea, but his Wife by Combination with the Plaintiff will not be ſworn. *Ca. Ch.* 296.

[A Wife ſhall be allowed to anſwer ſeparately, if ſhe cannot in Conſcience ſwear to the Anſwer prepared by her Huſband. *Ex parte Halſam*, *T.* 1740. 2 *Atkyns* 50.]

[If Huſband and Wife are joint Defendants, yet if it appears that they have oppoſite Intereſts, the Court will order the Wife to anſwer ſeparately. *Penne* v. *Peacock*, *M.* 8 *G.* 2. *C. T. T.* 41.]

So, if the Husband is beyond the Sea, and the Wife within the Realm, Proceſs againſt the Wife alone, for a Thing done by the Wife, or in which ſhe was a Truſtee, ſhall be regular, and ſhe ſhall be allowed to give a ſeparate Anſwer. *R.* 2 *Ver.* 614.

[If Huſband and Wife are Defendants, the Wife muſt anſwer, tho' her Anſwer cannot be read againſt the Huſband; tho' it may, poſſibly, againſt her when *diſcovert*. *Wrotteſly* v. *Bendiſh*, *H.* 1733. 3 *P. W.* 235.]

[If Huſband and Wife are Adminiſtrators and live abroad, and Wife coming to *England* is taken up on Proceſs of Contempt againſt both, and gives Bond for Appearance, appears, and obtains Time to anſwer ſeparately, ſhe cannot afterwards have the Bond and Appearance ſet aſide. *Travers* v. *Bulkeley*, H. 1749. 1 *Vezey* 383. 1 *Wilſon* 264.]

(2 M. 3.) What they ſhall be compelled to do.

Husband and Wife may be compelled to levy a Fine, or to perfect an Aſſurance.

So, to make a Releaſe of the Right of the Wife to Land.

[If *A.* ſettles an Eſtate in Truſtees to him for Life, his Wife for Life, and to the Heirs of their Bodies; they have a Daughter, who marries *B.* *A.* marries a ſecond Wife, and agrees to ſettle this Eſtate on her and their Iſſue, Afterwards all agree that *B.* ſhall have 200*l.* with his Wife, and the Eſtate go to *C.* Son of the ſecond Marriage; *B.* and his Wife by an Anſwer afterwards diſclaim, but ſhe after that refuſes to join with *C.* in a Conveyance to a Purchaſer: The Court will not decree her to join, but will decree *B.* to join, and to procure her to join, or that he *B.* ſhall refund the 200*l.* *Sedgwick* v. *Hargrave*, *M.* 1750. 2 *Vezey* 57.]

To reconvey by Fine Lands mortgaged, veſted in the Wife.

To produce Evidences.

To ſtay Waſte committed by the Wife.

(2 M. 4.) What not.

But a Huſband ſhall not be compelled to perform to his Wife, after a Separation, a Promiſe made her during Coverture, to give her 100*l.* 1 *Ch. R.* 60.

So a Woman ſhall not be compelled to perform her Agreement by Deed made during her Coverture.

Nor to abide by a Settlement made by her and her Huſband; if ſhe does not aſſent to it, after the Coverture is determined. *Ca. Ch.* 255.

Yet if the Settlement is in Lieu of the Performance of Marriage Articles, and the Wife, after the Death of her Husband, enters and takes the Profits, she shall not afterwards avoid it. *R. Ca. Ch.* 255.

(2 M. 5.) Act of the Husband when it binds the Wife.

If the Husband releases a Debt due to the Wife before Coverture, she shall be bound by it.

So, if he releases a Legacy, tho' only contingent, or there is a Possibility that the Wife may have it; if the Contingency afterwards happens. 2 *P. W.* (608.) *Vide Assignment, Ante* (2 H.)

[But if there is a Proviso in Marriage Articles, that if there is no Issue, then the Portion, and all Sums given the Wife during the Marriage, shall be enjoyed by the Husband, his Executors, *&c.* to their own Use; and the Wife's Mother leaves 2000*l.* to them and the Survivor, and if no Issue, then after the Death of the Survivor to her own Executor; and 1000*l.* is paid to the Husband, who dies and leaves all his Estate to his Executor, in Trust for, *&c.*; this 1000*l.* shall notwithstanding belong to the Wife, as not such Money as intended under the Covenant. *Hawkyns* v. *Obyn*, *P.* 1743. 2 *Atkyns* 549.]

If *A.* gives a Legacy to a Woman, and, upon her Marriage it is agreed that Part thereof shall be applied to the Payment of the Debts of the Husband, and after Marriage the Husband assigns the Residue for the Payment of his Debts, the Wife shall be bound thereby. *R. Eq. R.* 80.

So, if a Husband possessed of a Term for Years in Right of his Wife leases for a less Term, and, for the Security of Money borrowed of his Lessee, covenants to make him another Lease after the End of the Prior; the Wife shall be bound thereby; for this Covenant amounts to a Disposition of the Estate in Equity, pursuant to the Power of the Husband. *R. Eq. Ca.* 42, 3.*

* 2d Part of 2 *Mod. Ca.*

[If three Sisters of an Intestate agree to divide his Personal Estate, and sign a Memorandum at the Bottom of the Account; and a Mortgage in Fee, and another for a Term, are allotted to *A.* one of the Sisters, whose Husband before any Assignment, borrows 200*l.* of *B.* on Note, deposits the two Mortgages, and promises in Writing to assign them as a Security, and dies, this Promise to assign amounts in Equity to an Assignment *pro tanto*, but the Residue belongs to *A.* as her *Choses in Action*. *Bates* v. *Dandy*, *T.* 1741. 2 *Atkyns* 207.]

[Husband may assign his Wife's Term, or Trust of Term, (unless from himself for her Benefit,) or her Mortgage in Fee, or her Chose in Action, or her Possibility for valuable Consideration, or release her Bond without receiving any of the Money. *Ibid.*]

[If by Marriage Settlement of *A.* a Term is created to raise 2000*l.* apiece for the Daughters *living at his Death, who shall attain* 21, *or be married*; and one Daughter *B.* marries *C.* in *A.*'s Life-time. and previous to the Marriage there is a Covenant on the Part of *C.* reciting, that *B.* had assigned a Bond for 500*l.* to Trustees, to him for Life, her for Life, then to their Children then living, or in Default of Children to the Executor of the Survivor of *B.* and *C.* and that *C.* shall after the Marriage assign to Trustees all Money and Securities then due and owing, and *belonging* to *B.* or which she is intitled to in any Respect whatever; and then *A.* dies, and then *C.* leaving Children, the 2000*l.* shall be secured to them. *Bash* v. *Dalway*, *T.* 1747. 3 *Atkyns* 530. 1 *Vezey* 19.]

[If Husband and Wife join in Fine of the Wife's Lands to a Purchaser, and afterwards the Husband alone declares the Uses by Articles, and there is no other Deed declaring Uses, and these do not vary from what she intended, and she has acquiesced for many Years, she is bound. *Swanton* v. *Raven*, *T.* 1744. 3 *Atkyns* 105.]

So, if Husband and Wife by Articles during Coverture agree to have Lands inclosed; the Wife shall be bound, tho' it is Part of her Jointure. 2 *Ver.* 225.

So, if they agree to accept other Lands in Lieu of those in her Jointure; if after the Death of her Husband she complies with any Part of the Articles, she shall be bound. 2 *Ver.* 225.

So,

So, if a *Feme Sole* agrees for the Sale of Land, and, before it is compleated, ſhe marries, and another Agreement is made with the Huſband and Wife, which ſhe ſubſcribes; ſhe ſhall be bound by it after the Death of her Huſband.

[If Leaſe for Years is aſſigned before Marriage to Truſtees, to make Leaſes for Benefit of Husband and Wife, and after Marriage Husband and Wife make a Leaſe, it ſhall be good againſt the Widow, *Roupe* v. *Atkinſon*, *P.* 1724. *Bunb.* 162.]

So, if Huſband and Wife agree with a Tenant of Land of the Wife's, that, if he will ſurrender one Part, he ſhall have another Part for three Lives; this binds the Wife after the Death of the Husband.

So, if a Woman agrees with *A.* before Marriage, for a Thing to be carried into Execution after the Death of *A.* and then intermarries with him; it ſhall be decreed, and is not extinguiſhed by the Marriage. *R. Ca. Ch.* 118. *Vide Baron and Feme.*

(2 M. 6) When not.

But an Agreement by Husband and Wife, for the Sale of the Land of the Wife, does not bind the Wife.

[If two Siſters Joint-Tenants in Fee marry, and the Husbands make a Partition between themſelves, and the Heirs of the Wives; this Agreement of the Huſbands, tho' attended with long Poſſeſſion, does not bind the Inheritance of the Wives. *Ireland* v. *Rittle*, *M.* 1739. 1 *Atkyns* 541.]

So, if ſhe agrees to relinquiſh her Jointure for other Recompence, and it is decreed accordingly; ſhe not being a Party to the Decree, ſhall not be bound by that Agreement.

If Husband and Wife by Deed, without a Fine, mortgage Shares of the Wife in the *New River Water*, the Wife ſhall not be bound, tho' ſhe paid Intereſt after the Death of her Husband. *R.* 2 *P. W.* 127.

[If a *Feme covert* has an Intereſt in real Eſtate intailed, no Agreement of Remainder-men can bar the Intail without a Fine, nor can this Court carry ſuch Agreement into Execution as to a legal Eſtate. *Trafford* v. *Boehm*, *H.* 1746. 3 *Atkyns* 440.]

So, if Husband and Wife exhibit a Bill in Equity, and, after the Cauſe is at Iſſue, examine Witneſſes, and then the Husband dies; and her ſecond Husband exhibits with her a new Bill for the ſame Cauſe; they may examine the ſame Witneſſes, for the Wife was not bound by the Proceedings on the former Bill. 2 *Ver.* 197.

(2 M. 7.) When the Huſband ſhall be bound by the Act of the Wife.

[The Huſband during the Coverture is liable to all the Wife's Debts before Coverture, (in Equity as in Law), tho' he get no Fortune with her. *Heard* v. *Stanford*, *H.* 9 *G.* 2. *C. T. T.* 173. 3 *P. W.* 409.]

[And if any Part of her Fortune was not recovered by the Huſband during the Coverture, and it comes to his Hands as Adminiſtrator after her Death, it is liable to her Debts. *Ibid.*]

The Husband ſhall be charged after the Death of the Wife for the Debt of the Wife *dum ſola*, for Goods to her ſold, which came to the Uſe of the Husband after her Death. *R. upon Demurrer*, *Ca. Ch.* 295. *Vide Eq. Abr.* 60.

So the Husband ſhall be charged for the Profits of Land in Truſt taken by the Wife, *dum ſola*, and by her former Husband to whom ſhe was Executrix. *R. Ca. Ch.* 81.

So he ſhall be charged for Goods given to the Wife for Life, and after her Death to *A.* if the Wife waſtes them; tho' the Wife was then parted from her Husband: for *A.* does not claim under the Wife. 1 *Ver.* 143.

So a ſecond Husband ſhall be charged for a *Devaſtavit* by his Wife and her former Husband, where there is a Bond Debt due; for there is an actual Lien thereby. 1 *Ver.* 309.

So an Executor of the Husband ſhall be charged for the Debt of the Wife during a Separation, and ſhall not charge it upon the Jointure of the Wife. *R.* 1 *Ver.* 326.

So, for the Funeral of the Wife, tho' ſhe had a ſeparate Maintenance and makes an Executor, who takes Care of the Funeral; if he hath nothing by her Will. *R. Eq. Ca.* 31.*

* 2d Part of 2 *Mod. Ca.*

So, If a Woman before her ſecond Marriage makes a Proviſion for the Children of a former Husband; it binds the ſecond Husband. 1 *Ver.* 408.

So, tho' the Deed is detained in the Cuſtody of the ſecond Husband or his Agent, if it was public and made before the Treaty of the ſecond Marriage, where the ſecond Husband did not make a Settlement, or Compenſation for it. *R.* 2 *P. W.* 360, 609.

So, if there is a Covenant to transfer Stock for the Children of the firſt Huſband, which is not transferred before the ſecond Marriage. 2 *P. W.* 609.

[If a Widow having Children, for whom there is no Proviſion made by Articles previous to her ſecond Marriage (her intended Huſband Party thereto) conveys her Lands, *&c.* to Truſtees, to divide among her Children by the firſt Marriage, if none by the ſecond, or if any, then among the Children by both; and after Marriage Huſband and Wife mortgage to Perſons having Notice of the Settlement; the Settlement ſhall ſtand good, and not be conſidered as voluntary againſt Creditors or Purchaſers. *Newſtead* v. *Searles*, *H.* 1737. 1 *Atkyns* 265.]

[If a Man by Will gives a Third of the Moiety of the Reſidue of his Perſonal Eſtate to his Daughter *A.* who marries *B.* and they have Iſſue *C.* and while abroad aſſign over this Third in Truſt for *C.* if they die before their Return; *B.* dies, and before the Money is reduced into Poſſeſſion *A.* marries a ſecond Huſband *D.* and dies, *D.* ſhall make Proviſion for *C.* out of this Money; and if he writes Letters, ſaying, he is willing to ſettle the Whole on her, and dies, theſe Letters ſhall be taken as an Appropriation of the Whole to *C.* *Groſvenor* v. *Lane*, *P.* 1741. 2 *Atkyns* 180.]

(2 M. 8.) When not.

[The Husband is not chargeable (in Equity nor in Law) with his Wife's Debts after her Death, tho' he has a large Fortune by her. *Heard* v. *Standford*, *H.* 9 *G.* 2. *C. T. T.* 173. 3 *P. W.* 409.]

The Husband ſhall not be charged with a Debt upon ſimple Contract, or Breach of Truſt, by reaſon of a *Devaſtavit* by the Wife and her former Husband. 1 *Ver.* 309.

So, if the Wife before Marriage, makes a Settlement, without the Privity of the Husband, for her ſeparate Uſe; the Huſband ſhall not be bound by it. *R.* 2 *Ver.* 17. 2 *P. W.* 359, 535.

Tho' the Settlement was made upon a former Marriage, with the Privity of the former Huſband; the ſecond Huſband, not knowing of it, ſhall not be bound by it. 2 *Ver.* 17.

So, if ſhe makes a Settlement for the Children of her former Huſband without the Privity of the ſecond, but the Settlement is detained in the Cuſtody of him or his Agents. 2 *P. W.* 359.

So, if the ſecond Huſband has Notice of the Settlement, where it was ſubject to the Controul of the Wife, who limits the Eſtate to her ſecond Huſband. 2 *P. W.* 534.

Yet if the Wife before the Treaty for the ſecond Marriage makes a Settlement of a competent Part of her Eſtate, for a Proviſion of her Children by a former Huſband, the ſecond Huſband, not having made a Jointure in Recompence for this Eſtate, ſhall be bound thereby. 2 *P. W.* 358, 606.

So, if a Woman agrees to diſtribute the Reſidue of the Eſtate of *B.* amongſt others, and then marries, and by the Death of *B.* ſeven Years after the Marriage, ſhe becomes intitled to the Reſidue; the Husband is not bound to diſtribute, for he was not within the Intent of the Agreement. 1 *Ch. R.* 26.

If

If a Woman commits a *Devaſtavit*, and afterwards marries and dies, the Huſband ſhall not be charged beyond what he had with his Wife. *R.* 2 *Ver.* 118. *Vide Baron and Feme*, (2 C.)

If the Huſband makes a ſeparate Eſtate for the Uſe of the Wife during their Joint Lives, and afterwards limits the Eſtate to the Uſe of the Huſband for Life, and after his Death to the Heirs of the Wife, till his Heir pays 100*l.* to the Executor of the Wife, with Intereſt from the Death of her Huſband, and afterwards to the Wife for Life; if the Wife dies before the Huſband, the 100*l.* ſhall not be paid by the Huſband to the Executor of the Wife. *R.* 2 *Ver.* 330.

(2 M. 9.) Truſt for a Wife; when it enures to the Huſband.

If a Man deviſes Money for the Purchaſe of an Annuity in the Name of the Deviſee, to be paid to a Woman and her Aſſigns, and ſhe marries, and afterwards does not cohabit with her Huſband by reaſon of his Poverty; the Huſband is the Aſſignee of his Wife, not being excluded by ſpecial Words, and the Annuity, from the Time of the Bill by him exhibited ſhall be decreed to be paid to him. *R, Ca. Ch.* 194. *Vide Baron and Feme.* (E. 1, &c.)

So, if a Term for Years is ſettled by a Woman before Marriage in Truſt, and ſhe receives the Money after Marriage; the Property is in the Huſband, who may diſpoſe of it, at his Pleaſure. *R. Hob.* 3 *in Marg.* 1 *Ver.* 7, 18.

So, if a Term for Years is ſettled by the Wife, before Marriage, on *A.* in Truſt for herſelf, with the Aſſent of the Huſband, *A.* dies, and the Woman takes another Husband; the Truſt ſhall be in the Power of the ſecond Husband. *R.* 2 *Ca. Ch.* 73. *Semb. cont. Ca. Ch.* 208.

So, if the Wife, with the Conſent of the Husband before Marriage ſettles a Term to pay the Debt of the Husband, and afterwards in Truſt for herſelf; the Reſidue ſhall be in the Power of the Husband. *R.* 2 *Ca. Ch.* 73.

So, if a Marriage Settlement is agreed upon, and afterwards the Husband, to avoid a Sequeſtration, directs a Term to be veſted in Truſtees for the ſole Uſe of the Wife, and covenants that it ſhall be in the ſole Power of the Wife, yet takes the Profits during her Life; this Term, tho' proved but by one Witneſs to be made on ſuch an Occaſion, ſhall be decreed to the Husband. *R.* 2 *Ca. Ch.* 180.

If by Agreement before Marriage, the Wife is to be allowed to receive the Rents of her Eſtate to her ſeparate Uſe, and the Agreement is left with *A.* who receives, and, with the Privity of the Wife, pays the Rents to the Husband; *A.* ſhall not account for them to the Wife after the Death of her Husdand. 3 *Ch. R.* 7.

So, if the Husband ſettles a Term for Years, to the Uſe or in Truſt for his Wife; the Husband may diſpoſe, forfeit, or bar the Wife of it; for he hath the ſame Power over a Truſt in Right of his Wife, as he hath of a Term in her Right. *R.* 1 *Rol.* 343. *l.* 25. *per Finch. Ca. Ch.* 266, 225. *R.* 2 *Ver.* 270. *R. Lane* 54.

So. if a Term is granted to the Uſe of a Woman, who afterwards marries; the Husband may diſpoſe thereof. *Semb. Ca. Ch.* 266.

[If *A.* intitled to 5000*l.* to be raiſed by a Term in Lands, *S.* in her Father *B.*'s Marriage Settlement, and is Tenant in Tail expectant on her Father's Death in Lands, *K.* marries *N.* without Settlement, and *B.* mortgages Part of *S.* Lands to *T.* and then deviſes *S.* to be ſold for Payment of Debts and Legacies, and the Remainder to *A.* in Tail, and dies indebted, and *N.* agrees to ſubject *K.* together with *S.* to the Payment, and *N.* and *A.* levy a Fine, and both Eſtates by all proper Parties are ſettled to pay the Incumbrances on *S.* and all *B.*'s Debts and Legacies, and they are paid off except the Mortgage on *S.* and *N.* aſſigns the Truſt Term to *T.* and *T.* aſſigns the Mortgage Term of Part of *S.* to *N.* who demiſes other Part of *S.* to *T.* ſubject to Redemption on Payment; and afterwards *N.* and *A.* ſuffer Recovery of *S.* and ſettle it as to a Rent of 40*s.* *per Annum* to *N.* and his Heirs, and the Reſt to Truſtees, for a Term to raiſe 1000*l.* and ſubject thereto to *N.* for Life, *A.* for Life, Sons in Tail, Daughters in Tail, and the Survivor in

Fee. This is a ſufficient Diſpoſal of the Term by *N.* ſo that the 5000*l.* does not ſurvive to *A.* as a *Choſe in Action*, but ſhall be conſidered as Part of *N.*'s Perſonal Eſtate. *Incledon* v. *Northcote*, *H.* 1746. 3 *Atkyns* 430.]

[If a Man propoſing to give a *Feme-covert* Money for her ſeparate Uſe, to ſecure it gives her a Note for ſo much received, and promiſing to be accountable, it is Aſſets of the Husband after his Death. *Hodges* v. *Beverley*, *H.* 1724. *Bunb.* 188.]

[If a *Feme-covert* depoſits Money in a Man's Hands, to be kept for her ſeparate Uſe, it is Aſſets of the Husband after his Death. *Ibid.*]

So, if a Legacy is given to the Wife out of a Reverſion, after an Eſtate for Life; and during the Life, the Huſband aſſigns it to *A.* and dies; *A.* ſhall have it, tho' it is afterwards paid to the Wife and diſcharged by her. *R. Eq. R.* 88. *Vide Poſt*, (3 A. 3, 4.)

But if a Term is granted or ſettled by the Husband for the Jointure of the Wife; the Husband cannot diſpoſe of it. *R. Ca. Ch.* 266. *R.* 1 *Rol.* 343. *l.* 30. 1 *Ver.* 7. *R. Ca. Ch.* 225.

So it ſhall not be forfeited by the Outlawry, or Attainder of the Husband. *Ca. Ch.* 225.

Or if it is ſettled, after Marriage upon the Wife, and afterwards upon their Children; the Husband cannot diſpoſe of the Truſt for the Children. *Semb.* 1 *Rol.* 343. *l.* 32.

Or if a Term is ſettled before Marriage in Truſt for a Woman, who afterwards marries, and the Husband ſurvives; the Husband ſhall not have it, but the Executor or Adminiſtrator of the Wife. *R.* 4 *Inſt.* 87. *Co. Lit.* 351. 1 *Rol.* 346. *l.* 5.—*But ſaid per* Roll *to be R. cont. Al.* 15.

So, if Land is ſettled after Marriage for the ſeparate Maintenance of the Wife, who out of the Profits ſaves Money, which ſhe puts out at Intereſt in the Name of a Truſtee, and diſpoſes thereof by her Will, and dies; her Husband ſhall not have it. *R. Ca. Ch.* 118.

[If a Bond is deviſed to a Wife, *to her ſole and ſeparate* Uſe, the Intereſt is veſted in her in Equity, as much as if it had been deviſed to Truſtees for her ſeparate Uſe. *Rolfe* v. *Budder*, *H.* 1724. *Bunb.* 187.]

[If Perſonal Eſtate is given to the ſeparate Uſe of a *Feme-covert*, ſhe is conſidered as a *Feme-ſole*, and may diſpoſe of it and all the *Accruer* upon it, if ſhe is ſeventeen. *Hearle* v. *Greenbank*, *P.* 1749. 3 *Atkyns* 695. 1 *Vezey* 298.]

So, if a Term is created by a Woman, ſeiſed in Fee, for a ſpecial Purpoſe, *viz.* In Truſt for her Husband for Life, and afterwards, to the Iſſue of that Marriage, and for Default thereof to herſelf for the Reſidue of the Term; the Husband dies without Iſſue, and the Wife takes a ſecond Husband; He ſhall not have the Term as a Term in Groſs, but it ſhall go to attend the Inheritance of the Wife. *R.* 4 *Annæ*, 1 *Sal.* 154. 2 *Ver.* 520.

So, if a Woman Leſſee ſettles the Term in *A.* in Truſt, *&c.* and afterwards marries him in the Reverſion and dies; the Husband ſhall not have the Truſt. *Lane* 113.

Yet if a Term is before Marriage ſettled, with the Aſſent of the Husband, in Truſtees, for the ſole Diſpoſition of the Wife without her Husband; and the Wife permits the Husband to receive the Rents during his Life, his Executor ſhall not account for the Profits. *Semb.* 2 *Ca. Ch.* 182.

[If 100*l. per Annum* is ſettled in Truſt for a Wife's Pin-money, and the Husband notwithſtanding finds her in Clothes and other Neceſſaries, it is a Bar to any Demand for Arrears of Pin-money during ſuch Time. *Fowler* v. *Fowler*, *P.* 1735. 3 *P. W.* 353.]

So, if a Legacy is given to the Wife, Payment ought to be made to the Huſband; for it ſhall not be ſuppoſed to be for the ſeparate Uſe of the Wife, tho' ſhe lives ſeparately from her Husband. *R.* 1 *Ver.* 261, 2. *R.* 2 *Ver.* 659.

(2 M. 10.) When the Huſband ſhall be aided for the Portion of his Wife.

[Neither the Husband, nor any Perſon ſtanding in his Place, can have the Wife's Fortune, (in this Court) without making a Proviſion. *Middlecome* v. *Marlow*, *H.* 1742. 2 *Atkyns* 519.] *Vide Poſt.* 3 Z. 1. &c.

[A Wife muſt be preſent in Court, to conſent or elect; if abroad, Perſons may be impowered to examine her ſeparately, and to certify to the Court, ſhe and they ſigning it. *Parſons* v. *Dunne*, *M.* 1750. 2 *Vezey* 60.]

[If there is any Queſtion as to the Validity of the Marriage of a Ward of this Court abroad, the Court will not order Money out of the Bank to be paid to the Husband. *Roach* v. *Garvan*, *M.* 1748. 1 *Vezey* 157.]

So, if the Portion of the Wife is not paid before the Death of the Husband, where he has ſettled a Jointure for it, his Executor ſhall have it, tho' the Wife ſurvives. *R. Ca. Ch.* 189.

Tho' Part of the Portion was out upon Mortgage, which is a *Choſe in Action*, and ſurvives to the Wife generally. *R.* 2 *Ver.* 502.

Tho' no Agreement expreſſes, that the Husband ſhall have the Portion. 2 *Ver.* 502.

Tho' the Husband dies without Iſſue, and the Wife alſo dies before the Portion is paid; for by the Settlement of a Jointure, the Husband is a Purchaſer of the Portion. *R. Eq. R.* 71.

But, if the Husband ſettles a Jointure ſuitable to the Portion of his Wife, which conſiſts of *Choſes in Action*, and an Eſtate of Inheritance, and before the Securities are altered, and the Inheritance ſettled, the Husband dies; his Executor ſhall not have thoſe Debts, or the Inheritance, without a ſpecial Agreement for that Purpoſe, tho' the Husband left not, otherwiſe, Aſſets for his Debts. *R.* 2 *Ver.* 68.

[Yet if on Marriage certain Agreements are made by way of Settlement on the Wife, and the Huſband dies without having recovered a Bond Debt given to the Wife while ſole, it ſhall go to the Huſband's Repreſentative, he being a Purchaſer, tho' the Wife's Fortune was of more Value than what ſhe was to have by the Settlement, and ſo nothing moving from the Huſband to the Wife. *Adams* v. *Cole*, *H.* 9 *G.* 2. *C. T. T.* 168.]

Yet, if the Husband releaſes all Demands or Portions of his Wife for ſuch a Sum, this does not bar him of an Eſtate due to his Wife as Adminiſtratrix to her Siſter, who was dead before the Releaſe. *Ch. Ca.* 253. *Vide Ante* (2 B. 2.)

(2 M. 11.) When the Wife ſhall be aided againſt the Act of her Huſband.

If a Man agrees by Articles to make a Marriage Settlement, *Chancery* will compel him to do it. *Vide Poſt*, (3 Z. 1.)

If the Wife agrees to ſell her Inheritance upon Conſideration of having Part of the Money to her own proper Uſe, and the Money is veſted in Truſtees for the Benefit of the Wife; this Money ſhall not be ſubject to the Debts of the Husband, tho' the Wife afterwards conſents that it ſhall. *R.* 2 *Ver.* 64, 5.

So, if the Wife, having a Jointure, agrees to join with her Husband in a Sale of it, upon his Bond to ſettle ſo much other Land for her Jointure; the Wife as to this Bond ſhall be preferred to other Creditors. *R.* 2 *Ver.* 220.

But, if the Bond is to ſettle other Lands upon the Wife for Life, and afterwards upon the Children, where the Husband by a prior Settlement might have barred his Iſſue; the Children ſhall not be preferred to other Creditors. *R.* 2 *Ver.* 221.

[If a Woman before Marriage conveys her Eſtate to Truſtees, to pay her the Profits during Life, and after her Death as ſhe ſhould by Will appoint, (or for Want of it to her right Heirs,) and ſhe marries, and her Huſband mortgages, and they

they both levy Fine of the Premiſſes, declaring the Uſes to be for ſecuring Principal and Intereſt; this ſhall bind the Wife, tho' ſhe inſiſts in her Anſwer that it was by *Dureſs* and Fraud, unleſs it is otherwiſe proved. *Penne* v. *Peocock*, *M.* 8 *G.* 2. *C. T. T.* 41.]

[If by Articles previous to Marriage of *A.* and *B.* the Father of *B.* covenants to pay *A.* 1000*l.* and that his Executors ſhould pay him 500*l.* more as the Reſidue of *B.*'s Marriage-portion; and *A.* covenants to ſecure by Specialty 1000*l.* to *B.* if ſhe ſurvives; and after the Father's Death, *A.* being indebted, aſſigns the 500*l.* to *C.* and then becomes Bankrupt; *C.* ſhall have it. *Brett* v. *Forcer*, *H.* 1746. 3 *Atkyns* 403.]

If the Husband mortgages the Eſtate of the Wife, reſerving to them the Equity of Redemption; the Perſonal Eſtate of the Husband ſhall be firſt applied. 2 *Ver.* 604. After other Debts paid. 2 *Ver.* 689.

So, if a Man agrees upon his Marriage, that his Wife ſhall diſpoſe of Goods or Money by her Will, a Diſpoſal by Writing in the Nature of a Will ſhall be good. *Cro. Car.* 219, 376. *Vide Poſt*, (2 M. 14.) *Vide Baron and Feme*, (P. 3.)

And if it is found, that ſhe made a Will, the Verdict ſhall be good, tho' ſtrictly it is not a Will. *R. Cro. Car.* 219.

So, if the Wife makes a Diſpoſition, according to the Power given by her Huſband; it ſhall be good, tho' the Agreement or Bond entred into by the Husband is cancelled by the Wife during the Coverture. 1 *Ch. R.* 118.

So a Diſpoſition by the Wife, (who has an Article of her Husband for the Management of her own Eſtate) of Money acquired by her own Induſtry, allowing to the Husband a reaſonable Maintenance, ſhall be good. *R. Ch. R.* 57.

If Intereſt Money ſaved out of the ſeparate Eſtate of the Wife *dum ſola*, is put out at Intereſt, and a Bond given for it to the Husband, who declares by *Parol*, that it ſhall go for her ſeparate Benefit; the Wife ſhall have the Diſpoſal of it. *R.* 2 *Ver.* 748.

[If a Huſband deſerts his Wife and Children, and her Relations lend her Stock wherewith ſhe trades and makes a Profit, and lends Money on Bond and Note, which the Borrowers make payable to the Husband; all ſhall be conſidered as her ſeparate Property, and if the Husband ſeizes her Effects, the Court will order them to be reſtored in Specie, or if diſpoſed of, to pay the Value, and the Bond and Note to be paid to her ſeparate Uſe. *Cecil* v. *Juxen*, *H.* 1737. 1 *Atkyns* 278.]

(2 M. 12.) Proviſion for a Wife.

(2 M. 12.) How expounded.

How a Proviſion for the Dower of a Wife ſhall be aſſiſted by a Court of Equity, *Vide Poſt*, (3 E. 1, 2.)

When a Proviſion by Marriage Articles ſhall be inforced, *Vide Poſt*, (3 Z. 1, *&c.*

If a Man by his Will deviſes Lands to Truſtees, to pay a third Part of the Profits to his Wife, till his Son attains the Age of 21 Years, and the other two Thirds for his Debts; tho' the Son and Wife die (the Son under that Age) the third Part ſhall be paid to the Executor or Adminiſtrator of the Wife, till ſuch Time as the Son would have attained the Age of 21 Years. *R.* 2 *Ver.* 65.

If the Husband purchaſes a Patent of a Chace to himſelf and his Wife and *B.* and dies indebted, the Wife ſhall have the Benefit of it for her Life; for ſhe cannot be a Truſtee for her Husband, and therefore it ſhall be intended for her Benefit; tho' *B.* ſhall be a Truſtee for the Executor. *R.* 2 *Ver.* 67.

So, if the Husband takes a Mortgage, Bond, *&c.* in the Names of himſelf and his Wife; they ſhall go to the Wife, if ſhe ſurvives, and there are Aſſets ſufficient for his Debts. *R.* 2 *Ver.* 683.

[If *A.* deviſes 2000*l.* Stock to *B.* by her Maiden Name, not knowing her to be married, and the Husband and Wife agree to ſettle this 2000*l.* in Truſtees, in Truſt for the Husband and Wife, and the Survivor, and transfer to Truſtees, and a Declaration of Truſt is prepared and ſent to Husband, who objects to it as not according to the Agreement, and directs another according to it, which is drawn, but before executed Husband dies, and Wife adminiſters; ſhe ſhall have the 2000*l.*

2000*l.* in her own Right, and not as Adminiſtratrix. *Fort* v. *Fort*, *H.* 9 *G.* 2. *C. T. T.* 171.]

[If a Husband voluntarily after Marriage allows his Wife the Profit of Butter, Poultry, and the like, out of which ſhe ſaves 100*l.* which he borrows, and dies; the Court will allow this as a Debt, and ſhe ſhall come in as a Creditor for 100*l.* eſpecially if there is no Defect of Aſſets. *Slanning* v. *Style*, *M.* 1734. 3 *P. W.* 334.]

[Or if he allowed her two Guineas on the Renewal of every Leaſe. *Calmady* v. *Calmady*, 3 *P. W.* 339.]

[If Husband does not pay his Wife her full Pin-money, and on her complaining thereof, tells her ſhe ſhall have it at laſt, and dies; ſhe ſhall be let in to have the Arrears of her Pin-money. *Ridout* v. *Lewis*, *H.* 1738. 1 *Atkyns* 269.]

[If *A.* before Marriage conveys Land to Truſtees, to ſecure 100*l.* to his Wife for her ſeparate Uſe, and after many Years, on Diſputes, ſhe leaves him and goes abroad, but without Suſpicion of Incontinency, and is excommunicated for Non-appearance to a Suit for Reſtitution of conjugal Rights, inſtituted after Ejectment brought by the Truſtees for Arrears of Annuity; the Court will not relieve againſt Payment of it, tho' the Husband offers to receive her, and ſhe will not return; eſpecially if *A.* has paid her ſome Part of the Annuity ſince her Elopement. *Moore* v. *Moore*, *H.* 1737. 1 *Atkyns* 272.]

[If Husband, by Articles previous to a ſecond Marriage, agrees that One-third of his Eſtate ſhall after his Death go to his Wife, and One-third to his Children by that and the former Marriage, and afterwards transfers Stock to his Wife for her own Uſe, and makes his Will, directing that after his Marriage-contract fulfilled, his Effects ſhould be divided between his Wife and two Daughters; the Transfer of Stock ſhall not affect the groſs Eſtate of Teſtator, the whole of which was to be divided in ſuch Proportions by the Marriage Articles, which he could not alter; yet it is good againſt the Teſtator, and ſhall be anſwered out of his Teſtamentary Share; for Gifts between Husband and Wife will be ſupported in Equity, tho' the Law does not allow the Property to paſs. *Lucas* v. *Lucas*, *T.* 1738. 1 *Atkyns* 270.]

[If Father and Son are Parties to Marriage-contract, and there is a Deficiency in the Lands ſettled for Jointure, the Wife has a Lien on the Eſtates both of Father and Son. *Probert* v. *Morgan*, *P.* 1739. 1 *Atkyns* 440.]

[If by Articles previous to Marriage it is agreed, that every Thing which ſhould come to the Wife ſhould go to them for their Lives, and after the Death of Survivor to the Heirs of the Body of the Wife by the Husband begotten; the Money veſts in her only. *Green* v. *Ekins*, *M.* 1742. 2 *Atkyns* 473.]

[If *A.* having an Annuity for Life of 50*l.* iſſuing out of Lands, marries *B.* and on ſeparating, *B.* covenants to allow 14*l. per Ann.* out of his own Eſtate, and 24*l.* out of the Annuity, and 12*l.* for his Daughter by *A.* and then *B.* aſſigns all his Eſtate (including the Annuity) to *C.* a Creditor ſince the Deed of Separation, the Truſts ſhall be decreed as againſt *B.* and on *A.*'s paying *C.* the Remainder of his Debt, he ſhall aſſign the Annuity to the Truſtee in the Deed of Separation. *Fitzer* v. *Fitzer*, *H.* 1742. 2 *Atkyns* 511.]

[If *A.* an Infant intitled to a Leaſehold, and to 500*l.* Reſidue of her Father's Eſtate, marries *B.* who by Deed after Marriage agrees with the Father's Executors that the 500*l.* ſhall be ſettled to *A.*'s ſeparate Uſe for Life, and then to the Iſſue of the Marriage, with Power to Truſtees to lend the Money to *B.* which they do, and *B.* becomes Bankrupt; the Truſtee ſhall come in as Creditor for the Money paid after Execution of the Deed. *Middlecome* v. *Marlow*, *H.* 1742. 2 *Atkyns* 519.]

[If a Husband obliged to do a particular Thing for his Wife's Benefit, does a Thing equally beneficial, it ſhall be preſumed a Satisfaction: as, long Annuities are ſettled to Husband for Life, Wife for Life, then all the Children equally, with Proviſo, that Husband, Wife, and Truſtees, may ſell them abſolutely; Husband alone ſells, and afterwards ſettles Stock of greater Value to himſelf for Life, Wife for Life, eldeſt Son for Life, his Wife for Life, and to the Children: This is a Satisfaction for the long Annuities. *Weyland* v. *Weyland*, *P.* 1742. 2 *Atkyns* 632.]

[If Husband receives conſiderable Fortune by his Wife, and never makes Proviſion for her, and 500 *l.* is left her, for which ſhe brings Bill, and it is referred to the Maſter to receive Propoſals from him for a Proviſion, which he never lays before the Maſter, and the Executor by Order pays the Money, which is laid out in Stock for the Benefit of Husband and Wife, ſubject to further Directions, and Husband dies, the Principal and Dividends ſhall be paid to the Wife; had this been the whole Fortune, the Husband ſhould have had the Dividends. *Bond* v. *Simmons, M.* 1743. 3 *Atkyns* 20.]

[If Husband has received great Part of Wife's Fortune, and will not make Settlement, the Court will prevent his receiving the Reſidue, and even the Intereſt, which ſhall accumulate for her Benefit, unleſs he is ſtarving. *Ibid.*]

[If an Eſtate is given to a Husband for the *Livelihood* of his Wife, he ſhall be conſidered as Truſtee for her ſeparate Uſe. *Darley* v. *Darley, M.* 1746. 3 *Atk.* 399.]

[If *A.* on his Marriage with *B.* ſettles an Eſtate, which he has no Right to ſettle, on her in Jointure, and *A.* alſo covenants to leave her a Houſe worth 3000*l.* or that his Heirs, Executors, *&c.* ſhould pay her Intereſt of 3000*l.* and there is alſo a Term for paying her 150*l.* *per Annum* on Failure of Performance, and her Portion is applied to diſcharge Incumbrances which are aſſigned to her; after *A.*'s Death, and not leaving the Houſe, *C.* the Reverſioner, on confirming *B.*'s Jointure and the Covenant, ſhall have the Incumbrances aſſigned to him, and be indemnified out of the Perſonal Eſtate againſt the 150*l.* *per Annum*. *Lord Portſmouth* v. *Lady Suffolk, T.* 1747. 1 *Vezey* 30.]

[As in the Caſe of Pin-money, ſo if a Wife ſuffers her Husband (one of the Truſtees) to receive the Rents of her ſeparate Eſtate, ſhe can come in as a Creditor only for one Year's Arrears. *Lord Townſhend* v. *Windham, T.* 1750. 2 *Vezey* 1.]

[If Husband, on Receipt of his Wife's ſeparate Eſtate, buys Jewels, and gives them to her, it is like paying her the Money of her ſeparate Eſtate, and ſhe may retain them, tho' not as *Parapharnalia*. *Ibid.*]

[If a Man has Power to make a Jointure of a *clear* yearly Value, the Value is to be computed at the Time the Jointure is made, and not during the Continuance. *E. Tyrconnel* v. *D. Ancaſter, T.* 1754. 2 *Vezey* 499.]

[Clear yearly Value means clear of Taxes borne by Tenants, according to the Uſage of the Country where the Lands lie, but ſubject to Land-tax, and thoſe borne by Landlords. *Ibid.*]

(2 M. 13.) Whenbarred.

But, if the Husband ſecures 300 *l.* for his Wife, if ſhe ſurvives him, by Bond and Judgment, and afterwards the Husband and Wife join in a Fine of the Lands of the Husband and cancel the Bond, and the Purchaſer reſerves 200 *l.* to ſecure himſelf againſt an Annuity charged upon the Eſtate, and gives a Mortgage to a Creditor of the Husband to pay him the 200 *l.* after the Annuity ceaſes; the Wife, tho' ſhe ſurvives, ſhall be barred of the 300 *l.* againſt the Purchaſer and the Mortgagee. *R. Eq. R.* 19.

(2 M. 14.) Diſpoſition by a Wife.

If there is a Proviſion that the Wife by her Will ſhall diſpoſe; a Writing, in the Nature of a Will, is ſufficient to diſpoſe, tho' ſhe cannot make a Will. *Cro. Car.* 219, 376. *Vide Ante*, (2 M. 11.)

[If *Feme-covert* has a Power to diſpoſe by Writing purporting to be a Will, yet proving it in the Spiritual Court will not give it the Authority of a Will, it is only an Inſtrument or Appointment in Purſuance of a Power, and before it is proved in the Commons as a Teſtamentary Conveyance, the Husband ſhould be examined as to his Conſent. *Henley* v. *Philips, T.* 1740. 2 *Atkyns* 48.]

So, if ſhe has a Power to diſpoſe in the Life-time of her Husband, tho' it is not ſaid, that ſhe may do it by ſuch Writing. 2 *Ver.* 329.

If ſhe has a Power to diſpoſe by Writing under her Hand and Seal, a Diſpoſition by Will ſigned and ſealed by her ſhall be good. *R. Cro. Car.* 376.

[If there is a Power to Husband and Wife, and the Survivor, over a Reverſionary Intereſt after their Deaths, by Writing under Hand and Seal before two Witneſſes,

neſſes, and Husband dies, Wife marries again, and during Coverture appoints by Will ſo executed, it is good. *Burnet* v. *Mann*, *M.* 1748. 1 *Vezey* 156.

If upon Marriage a Power is reſerved to the Wife to diſpoſe of her Perſonal Eſtate, ſhe may alſo diſpoſe of all the Profits thereof. 2 *Ver.* 535.

So all her Perſonal Eſtate ſhall be preſumed to be the Produce of her ſeparate Eſtate, if it does not appear to have come to her by other Means. *R.* 2 *Ver.* 535.

So, if after Marriage the Husband gives a Note, that his Wife ſhall have ſuch Money at her Diſpoſal; the Principal and Intereſt ſhall be her ſeparate Eſtate. 2 *Ver.* 659.

[A mere voluntary Promiſe from a Husband to a Wife, and executory only, is never eſtabliſhed by this Court, therefore, if Husband gives a Note or Certificate to his Wife, declaring ſhe may diſpoſe of 200*l.* as ſhe thinks proper, ſhe cannot diſpoſe of them after his Death by Will. *Darley* v. *Darley*, *M.* 1746. 3 *Atkyns* 399.]

[If Money is ſettled to be laid out in Lands, and a Term created to raiſe 4000*l.* to be paid according to the Wife's Appointment, and there happens a Loſs on the Funds in which the Money is veſted, it falls on the Reſidue, and no Part of it on the 4000*l.* *Oke* v. *Heath*, *M.* 1748. 1 *Vezey* 135.]

[If on Marriage an Eſtate is ſettled in Truſtees, to receive Rents and Profits for Wife's ſeparate Uſe, and as ſhe ſhall direct, and ſhe ſells it without Truſtees Knowledge, and Husband covenants, that it is free from Incumbrances, and there is no Proof of Husband's uſing Influence, tho' he received the Money, the Purchaſe is good; but the Purchaſer muſt rely on Husband's Covenant ſolely as againſt Incumbrances. *Grigby* v. *Cox*, *T.* 1750. 1 *Vezey* 517.]

[*Feme-covert* can diſpoſe of her real Eſtate only by Fine, or by having conveyed to Truſtees before Marriage, in Truſt, for ſuch Perſon as ſhe ſhall appoint, or by way of Power over an Uſe, as if ſhe conveys to Uſe of herſelf for Life, Remainder to Uſe of ſuch Perſon as ſhe ſhall appoint; but not by bare Agreement with the Husband; tho' that may bar Tenancy by the Curteſy, unleſs the Agreement be ſuch, that ſhe may afterwards apply to Equity to compel the Husband to carry it into Execution, and then Q. whether her Heir at Law is bound? *Peacock* v. *Monk*, *H.* 1750. 2 *Vezey* 190.]

[If a Father creates a Truſt of real Eſtate, the Rents to be paid to his Daughters, ſole or covert, for their ſeparate Uſe, to their own Hands, or as they appoint, and they join in Bond with their Husbands; the Truſtee ſhall pay the Rents to the Obligees. *Stanford* v. *Marſhal*, *M.* 1740. 2 *Atkyns* 68.]

[If *Feme-covert*, having ſeparate Eſtate, doth with her Husband and her Truſtee call it in, diſcharge the Truſtee, and it is placed out in the Husband's Name, and Intereſt is received by him, and on his Death ſhe manages it as his Executrix; ſhe is barred from claiming it as her ſeparate Eſtate. *Pawlet* v. *Delaval*. *T.* 1755. 2 *Vezey* 663.]

[It is not determined that a Wife may not diſpoſe of her ſeparate Property without the Intervention of Truſtees, or to her Husband without Truſtees, or her judicial Conſent in Court. *Ibid.*]

[She may do it by Act *in pais*, where no Menace or Impoſition. *Ibid.*]

[She may pledge it as a Security for Husband's Debt, and then Husband ſhall exonerate. *Ibid.*

(2 M. 15.) When the Huſband is in Exile.

So, the Wife, where the Husband is in Exile, may act in all Reſpects as a *Feme Sole*: And therefore, may make a Will, and diſpoſe of her Land; tho' by the *St.* 34 *H.* 8. a Deviſe of a *Feme Covert* is void. *Eq. Abr.* 171. 2 *Ver.* 104.

(2 M. 16.) When the Covenant of an Huſband or Wife ſhall be inforced, tho' void.

If the Husband gives a Bond or Covenant to his intended Wife, to make a Settlement upon her, tho' the Bond is avoided by the Marriage, it ſhall be Evidence of an Agreement, and the Husband ſhall be compelled to make a Settlement. *R.* 2 *P. W.* 243.

So, if the Wife covenants, being an Infant, to ſettle her Eſtate, ſhe ſhall be compelled to do it, if the Husband makes a ſuitable Settlement. 2 *P. W.* 244.

(2 N.) Charitable Uſes.

(2 N. 1.) Relief by Original Bill.

Vide Ante, (Y. 6.)

CHANCERY will relieve by Original Bill upon a Gift to Charitable Uſes within the *St.* 43 *El.* 4. *R. Ca. Ch.* 135, 267. *Dub. Ca. Ch.* 158.

[The Court will not make a Decree for eſtabliſhing a Charity, which is properly regulated by Charter from the Crown. *Attorney-general* v. *Smart*, *H.* 1747. 1 *Vezey* 72.]

[A School founded by Charter muſt be regulated according to the Charter, not in this Court, as where no Charter. *Attorney-general* v. *Middleton*, *T.* 1751. 2 *Vezey* 327.]

[The Statutes of a private Foundation under a Charter are not executed in this Court. *Ibid.*]

[The Juriſdiction of this Court does not extend to Charity-Schools where local Viſitors are appointed; if it is a private Viſitor, he and his Heirs have a Right. *Attorney-general* v. *Price*, *T.* 1744. 3 *Atkyns* 108.]

[If there is a Publick Endowment by the Crown, then a Commiſſion may iſſue from this Court to inſpect the Charity, and the Application of the Money; but if by Letters Patent, or Act of Parliament, a local Viſitor is appointed, this Court cannot interpoſe. *Ibid.*]

[Yet the Chancellor, in relation to *Berkhamſtead* School, founded by Act of Parliament, with a local Viſitor, (the Warden of *All Souls*,) did make a Decree for taking an Account for letting Leaſes, and propoſed augmenting the Salaries of the Viſitor, the Schoolmaſter, and the Uſher. *Ibid.*]

[Where the Governors of an Hoſpital are Viſitors alſo, they are accountable to this Court *quoad* the Eſtates, but not *quoad* the Government of the Houſe. *Attorney-general* v. *Lock*, *T.* 1744. 3 *Atkyns* 164.]

[If Truſtees have a diſcretionary Power to repair Road *A.* till it is good, and then Road *B.* the Court will not interpoſe, unleſs they act corruptly; yet will not diſmiſs the Information. *Attorney-general* v. *Harrow School*, *T.* 1754. 2 *Vezey* 551.]

What are Charitable Uſes, and how regulated by Commiſſioners, *Vide Uſes*, (N. 1, *&c.*)

So, by a Bill by the Attorney General by way of Information, it will ſettle or direct the Diſpoſition of a real or perſonal Eſtate to Charitable Uſes. *Ca. Parl.* 22. *Ch. R.* 259. Tho' the King is Patron. *Skin.* 645.

And oblige Truſtees to act or aſſign their Truſt. *Ca. Parl.* 22. *Vide Poſt.* (4 W. 6.)

[On an Information by the Attorney-general, the Court will give proper Directions as to the Charity, without regard to the Impropriety of the Prayer of the Information. *Attorney-general* v. *Jeanes*, *H.* 1737. 1 *Atkyns* 355. *Attorney-general* v. *Brereton*, *T.* 1752. 2 *Vezey* 425.]

[Where there is no Charter, the Information ſhall not be diſmiſſed, becauſe the Relief prayed is improper; but there ſhall be a Decree for the Eſtabliſhment; otherwiſe, if there is a Charter. *Attorney-general* v. *Middleton*, *T.* 1751. 2 *Vezey* 327.]

[Any Perſon, tho' the moſt remote, in the Contemplation of a Charity, may be Relator. *Attorney-general* v. *Bucknall*, *T.* 1742. 2 *Atkyns* 328.]

And a Charitable Uſe, as well as a Purchaſer, ſhall be relieved againſt a voluntary Conveyance.

So, againſt a Leſſee, who made originally a Mortgage, but afterwards diſcharged and aſſigned it for ſecuring a Purchaſer of other Tenements in the Leaſe from meſne Incumbrances. *R.* 1 *Ch. R.* 20, 21.

And to ſuch a Bill all the Ter-tenants need not be Parties. *R.* 1 *Sal.* 163.

So a Decree by the Commiſſioners may be confirmed by Original Bill. *R. Ca. Ch.* 193.

Notwith-

[Notwithſtanding a Decree under a Commiſſion of charitable Uſes, the Court may permit a Suit here, in which neither Side is bound by what appeared before the Commiſſioners, but may ſet forth new Matter. *Burford* v. *Lenthall*, *P.* 1743. 2 *Atkyns* 551.

So, if one Ter-tenant is charged with a Charitable Uſe, he may make all the others contributory. 1 *Sal.* 163. 1 *Ch. R.* 92.

But, if the Gift is not for a Charity within the *St.* 43 *Eliz.* the Bill ſhall not be in the Name of the Attorney General. 2 *Ver.* 387.

[Augmentations of Vicarages are Charities, and therefore an Information in the Name of Attorney-general, may be brought to eſtabliſh a Curate's Right to a perpetual Curacy augmented. *Attorney-general* v. *Brereton*, *T.* 1752. 2 *Vezey* 425.]

So, if there is an Appeal from a Decree of the Commiſſioners, it may be heard as well by the *Maſter of the Rolls*, as by the *Chancellor*. *Dub. Pr. Ch.* 111.

(2 N. 2.) Tho' the Gift be void by Law.

And a Gift to Charitable Uſes ſhall be decreed tho' it is void in Law; as, a Deviſe of Tithes impropriate to the Curate of ſuch a Pariſh, and afterwards to all thoſe who ſhall have the Cure there; tho' the Curate is not a Corporation it is good, and the Heir of the Deviſor ſhall be ſeiſed in Truſt for him. *R.* 2 *Vent.* 349. *Vide in Uſes*, (N. 11.)

So a Deviſe of 10 *l. per Ann. quamdiu* a Sermon ſhall be at *A.* ſhall be decreed, tho' it is not ſaid to whom it ſhall be paid, and tho' no Sermon was there; for the Words are tantamount to *May be*, *&c.* *R.* 2 *Ca. Ch.* 18.

So, if a Rectory impropriate is deviſed for the Maintenance of a Miniſter, without ſaying to whom; it ſhall he decreed to a Clerk to be inſtituted by the Ordinary. *R.* 2 *Ca. Ch.* 19, 31.

If a Copyhold is deviſed and there is no Surrender to the Uſe of the Will; it ſhall paſs. *C. Ch. R.* 75. *Vide Eq. R.* 5, 6. *Vide Pr. Ch.* 271. *Vide Uſes*, (N. 11.)

[If Copyhold not ſurrendered is deviſed to a charitable Uſe by a Will without Witneſſes, it is good as a Direction to the Heir at Law to ſurrender, Copyholds not being within the Statute of Frauds; it is alſo good as an Appointment under 43 *Eliz. c.* 4. and a Surrender is not wanted, as a Deviſe of Lands intailed is good without a Recovery. *Attorney-general* v. *Andrews*, *H.* 1748. 1 *Vezey* 225.]

If a Deviſe or Settlement, to a Charitable Uſe, is made by Tenant in Tail without Fine or Recovery; it ſhall be good againſt his Iſſue and him in the Remainder *R. Pr. Ch.* 16.

So a Gift to Charitable Uſes, ſhall be decreed, tho' made before the *St.* 43 *E.* 4. and then void in Law; for that Statute hath a Retroſpect. *R. Ca. Ch.* 195.

But *Chancery* will not aid a Charitable Uſe, where the Will is void for want of three Witneſſes, *&c.* according to the *St.* 29 *Car.* 2. *Eq. R.* 5. *Pr. Ch.* 272, 390.

(2 N. 3.) Where the Land, *&c.* given is improved.

So, if Lands are given to Charitable Uſes, and afterwards by Improvement, *&c.* they are of greater Value; *Chancery* will make Application of the Improvement to the ſame Uſes. *Vide* 2 *Ca. Ch.* 53. *Pr. Ch.* 225.

If a Deviſe is of 10 *l. per Ann. quamdiu* a Sermon ſhall be at *A.* and no Sermon was for many Years there; the Arrears ſhall be applied for the Purchaſe of other Land for the Increaſe of the Salary. 2 *Ca. Ch.* 18.

If a Man ſays that, having determined his Manor for Charitable Uſes, he deviſes it, which was of the Rent of 240 *l. per Ann.* to Truſtees, upon Truſt to pay ſuch Sums annually, which amount to 120 *l. per Ann.* to ſuch Charities; the Surplus alſo ſhall be decreed to Charitable Uſes. *R. Ca. Parl.* 23.

So, if Lands given to Charitable Uſes are in Leaſe and improved, the Leſſees ſhall be decreed to make an Increaſe of the Rent; for they ought not to gain, if they do not loſe, by the Charity. *R. Ca. Ch.* 195.

So, if Lands then in Leaſe for 70 *l. per Ann.* are purchaſed by a Corporation, but the greater Part of the Purchaſe Money given by the Charity of private Perſons, and afterwards the Lands are impowered to a greater Value; tho' 70 *l. per Ann.* only was allotted for Charities, and the Surplus always applied to the Uſe of the Corporation, yet the Surplus ſhall go for the Augmentation of the ſame Charities. *Cont. in Chancery, but reverſed in Parliament.* 2 *Ver.* 397.

(2 N. 4.) How Charitable Uſes ſhall be decreed.

(2 N. 4.) According to the Intent of the Donor. *Vide Uſes*, (N. 22.)

Chancery will decree the Charity generally as near as can be to the Intent of the Donor; and therefore, if the Gift is of Money to the Pariſh of *B.* generally; it ſhall be decreed to the Poor. *R. Ca. Ch.* 135.

If the Gift is for the Poor within the Precincts of the City of *R.* if other Pariſhes are afterwards admitted within the Precincts of the City, the Poor of the Pariſhes admitted ſhall have a Proportion of the Charity. *R. Ch. R.* 194.

[If Money is left to a Ward according to Mr. ——— his Will, the Court will (the Attorney-general being a Party) decree it to be diſpoſed of as the Alderman and principal Inhabitants think moſt beneficial for the Ward. *Baylis* v. *Attorney-general*, *H.* 1741. 2 *Atkyns* 239.]

If Land is veſted in Truſtees for a Chapel for the Uſe of the Inhabitants of *W.* the Miniſter ſhall be choſen by the Inhabitants, not by the Truſtees. 2 *Ver.* 387.

So, if the Lord of a Manor veſts Part of the Waſte in Truſtees for a School for the Pariſh, which is erected by Contribution of the Inhabitants. *Dub.* 2 *Ver.* 387.

[If *A.* leaves Money by Will, to be diſtributed in Charities therein deſcribed at the Diſcretion of his three Executors, and one dies before filing Information; the Power of nominating the Perſons to partake of the Charity is continued to the Survivors, for it is an Authority coupled with an Intereſt. *Attorney-general* v. *Glegg*, *M.* 1738. 1 *Atkyns* 356.]

[But it is ſo far a Truſt that the Court may interpoſe, having a more extenſive Juriſdiction in Charities than in other Caſes. *Ibid.*]

[The Executors cannot in ſuch Caſe divide the Charity into Thirds, and each nominate to a Third abſolutely, for a Determination of every Object is left to all three. *Ibid.*]

[If *A.* has Power to nominate a Maſter of a School in ſixty Days after Avoidance, on Default the Dean and Chapter in thirty Days, on Default the Biſhop; *A.* nominates *B.* who is not qualified, not being a Prieſt; Biſhop gives Notice of Lapſe to Dean and Chapter, who do not nominate, Biſhop nominates *C.* who reſigns into the Hands of *A.* who again appoints *B.* now a Prieſt; this ſhall be a good Nomination, tho' *C.* had not taken the Oaths. *Attorney-general* v. *Wycliffe*, *H.* 1747. 1 *Vezey* 80.]

[If it is quite uncertain whether the Donor intended that the capital Sum ſhould be diſpoſed of, or only the Intereſt and Produce of it, the Court will not confine it to the Intereſt and Produce. *Attorney-general* v. *Bucknall*, *T.* 1742. 2 *Atk.* 328.]

[Where a Legacy is given to a Charity, Intereſt ſhall be paid from Teſtator's Death. *Attorney-general* v. *Hayes*, *H.* 1736. 1 *Atkyns* 356.]

[The Owner of Land charged with an Annuity for Payment of a Schoolmaſter is not excuſed from the Payment when there is no Schoolmaſter, tho' it continues for Years, and without the Fault of the Owner. *Aylet* v. *Dod*, *H.* 1741. 2 *Atkyns* 238.]

[If *A.* by Will gives "to the *Latin* School at *Y.* andif any Man is poſſeſſed of "it that teacheth Boys, and is richly grounded in the *Latin* Tongue, 5 *l.* to be "paid him yearly for teaching three Boys," it ſhall be paid to the Schoolmaſter for ever. *Cheeſeman* v. *Partridge*, *M.* 1739. 1 *Atkyns* 436.

[If a College, having particular Powers as to a School, appoints one of their Fellows Maſter, and another Fellow Uſher, (which had never been done before) with an yearly Salary, and the Uſher never attends, nor receives the Salary, but the Maſter receives it, and there are but very few Boys; the Court will order the Maſter

Maſter to refund the Uſher's Salary to the Charity, tho' he ſays he thinks himſelf liable to account to the Uſher for it, and alſo that he has ſpent it. *Attorney-general* v. *Corporation of Bedford*, *T.* 1754. 2 *Vezey* 505.

[If a Man deviſes his real and perſonal Eſtate to Truſtees, to pay certain Annuities and Legacies, and then in Truſt as to the Surplus for thoſe Perſons that are commonly called Diſſenting Miniſters, particularly 35 *l. per Annum* to him at *B.* the like to him at *W.* the like to him at *D.* it ſhall be decreed them. *Lloyd* v. *Spillet*, *M.* 1734. 3 *P. W.* 344. *H.* 1740. 2 *Atkyns* 148.]

[If *A.* gives to *B.* Miniſter of the Baptiſts at *M.* 50 *l.* and then gives Lands to *C.* in Fee, chargeable with an Annuity to the Baptiſt Miniſter at *M.* or elſewhere, in the Pariſh of *H.* with Power to diſtrain; it is good Charity, and ſhall go to the Miniſter for the Time being; (this Will was made before the *Mortmain* Act.) *Attorney-general* v. *Cock*, *P.* 1751. 2 *Vezey* 273.]

[The Court will examine into the Reaſons for the Amotion of a Penſioner in an Hoſpital with the ſame Nicety as if his Freehold was concerned. *Attorney-general* v. *Lock*, *T.* 1744. 3 *Atkyns* 164.]

(2 N. 5.) Circumſtances ſhall be regulated.

So, *Chancery* may regulate the Manner and Circumſtances of the Gift: As, a Deviſe of 10 *l. per Ann. quamdiu* there ſhall be a Sermon every *Saturday* at *A.* to be choſen by the Majority of the beſt Inhabitants was decreed to a Catechiſt, to be approved by the Biſhop. *R.* 2 *Ca. Ch.* 18.

So, if a Rectory impropriate is deviſed for the Maintenance of a Miniſter, without a Reſervation of the Nomination to himſelf; the Miniſter ſhall be inſtituted by the Biſhop, and it ſhall not be a Donative. *R.* 2 *Ca. Ch.* 19, 31.

If an Hoſpital is founded, and by the Conſtitution the annual Rent (which was 120 *l. per Ann.*) is not to be enlarged, nor above three Years Rent taken as a Fine upon the Renewal of a Leaſe for twenty-one Years; yet upon an Alteration of the Prices of Proviſions and the Circumſtances of the Times, the annual Rent may be augmented. *R.* 2 *Ver.* 596.

So, if a Leaſe is made of Lands given to Charitable Uſes, to *A.* at the Rent of only a third Part of the improved Value, in Conſideration that he had expended divers Sums of Money for the Recovery of the Charity, with a Covenant that the Leaſe ſhall be renewed without a Fine: The Leaſe ſhall be renewed, but the Rent ſhall be augmented to a third Part of the then preſent Value. 2 *Ver.* 746.

If *A.* having relieved ſeven poor Women of the Pariſh of *L.* where he inhabited, during his Life, by his Will gives 28 *l. per Ann.* to be diſtributed yeary amongſt ſeven poor Women; it ſhall be diſtributed in Perpetuity to ſeven of the ſame Pariſh. *Ch. R.* 354.

Yet Alteration of Circumſtances ſeems to be in the Diſcretion of the Court. 1 *Ver.* 55.

(2 N. 6.) Where the Uſe may be improved.

So, if Land be given to a ſuperſtitious Uſe, *quamdiu* the Law permits, it may be decreed to a good Uſe. 2 *Ca. Ch.* 18.

If it is given to a Nunnery, *&c.* *R. Sal.* 162.

Or, to a Popiſh Prieſt. 2 *Ver.* 266.

(2 N. 7.) The Improvement of the Eſtate diſtributed.

So, if Lands given to particular Uſes are improved; the Improvement ſhall be for the Augmentation of the ſame Uſes in Proportion.

But where Land is given to an Hoſpital, and a Stipend to a Prebend, to be Warden, is aſcertained; the Improvement of the Rents ſhall all be diſtributed to the Poor of the Hoſpital. 2 *Ca. Ch.* 53.

If a Charity is given for the Maintenance of twelve poor Perſons, and an Improvement is made at the Charge of the Pariſh; the Improvement may be applied to other Uſes of the Pariſh. *Pr. Ch.* 225.

And if Truſtees are negligent, they ſhall be decreed to account and aſſign their Eſtate to other Truſtees. *Ch. R.* 269.

Who are bound by the Decree. *Vide in Uſes*, (N. 23.)

How

How a Decree by Commiſſioners of Charitable Uſes ſhall be certified to *Chancery*, and how Exceptions ſhall be taken to it. *Vide Uſes*, (N. 24, 25.)

When *Chancery* confirms, enlarges, or annuls it. *Vide Uſes*, (N. 26, 27.)

How executed, *Vide Uſes*, (N. 26.)

(2 O 1.) Certiorari Bill.

IF there is an Action in an inferior Court, in which the Defendant cannot have Right done him, becauſe his Witneſſes live out of the Juriſdiction, or for any other Cauſe; the Defendant may exhibit his Bill in Equity in the Nature of a *Certiorari* to remove his Cauſe into *Chancery*. 2 *Ver.* 491. *Ch. R.* 203. *Eq. Abr.* 80.

And thereupon the Plaintiff in the inferior Court ſhall be put to anſwer, and the Plaintiff in Equity may proceed to the Hearing of the Cauſe. *Ca. Ch.* 31.

And the Plaintiff may inſert other Matter in the *Certiorari* Bill, and then there ſhall be no *Procedendo*. *Eq. Abr.* 80.

So, tho' the Suit is in a County Palatine a *Certiorari* Bill lies. 1 *Ver.* 178.

So, after a *Procedendo* upon a *Certiorari* Bill and a Decree in the inferior Court, the Party ſhall have a Bill here to inforce or remedy it. *Ch. R.* 224.

The Plaintiff in a *Certiorari* Bill ought to give Security by Bond to prove his Suggeſtion within and if the Maſter does not certify the Suggeſtion proved, a *Procedendo* goes. 2 *Ver.* 492. *Vide Ante*, (D. 9.)

If the Suggeſtion is proved, the Defendant anſwers, Witneſſes are examined, Publication paſſes, and a *Subpœna ad aud. Judicium* goes. 2 *Ver.* 492.

And upon the Hearing, the Court may determine, or award a *Procedendo*. 2 *Ver.* 492, *Ch. R.* 224.

So, a *Procedendo* may go after Publication, before a *Subpœna ad aud. Judicium*. 2 *Ver.* 492.

So, after a *Subpœna ad aud. Judicium*. *Eq. Abr.* 81.

So, the Court may grant a *Procedendo*, or hear the Cauſe, at Diſcretion. *Eq. Abr.* 81.

But after a Decree to account in the *Exchequer* of *Cheſter*, *&c.* or other *County Palatine*, the Defendant ſhall not have a *Certiorari* Bill, upon a Pretence that his Witneſſes and Deeds are out of that Juriſdiction. *R. Ch. R.* 452, *Upon a Plea of ſuch a Decree.*

(2 O. 2.) Bill by way of Appeal.

So a Bill lies by way of Appeal to Proceedings in the Spiritual Court.

And ſuch Bill ought to alledge, that the inferior Court proceeds unjuſtly, but need not ſpecify in what Particulars. 1 *Ver.* 442, 3.

(2 P.) Common.

Vide Common. CHANCERY will adjuſt and ſettle Diſputes between Commoners.

If a Copyholder has the Freehold granted to him, with his Common; tho' the Common is extinct by Law, the Copyholder ſhall have it in Equity. *R.* 2 *Ver.* 250.

But a Bill ought not to be brought to prove a Right to Common, till his Right be eſtabliſhed by a Trial at Law. 1 *Ver.* 308, 9.

Tho' the Plaintiff had the Enjoyment for fifty Years. *Eq. Ca.* 183.

So a Corporation, which has a Manor for the Benefit of the Inhabitants, ſhall not be allowed to incloſe or to make Leaſes, without the Conſent of the major Part of the Inhabitants. *Ca. Ch.* 269, 270.

So a Bill ſhall not be allowed againſt a Grantor of Common for over-ſtocking the Common. *R.* 2 *Ver.* 116.

So *Chancery* will inforce the Performance of an Agreement for the incloſing of a Common, and will ſend down a Commiſſion for ſettling the Title of every one. *Ca. Ch.* 48. *Ch. R.* 18, 144. 3 *Ch. R.* 14.

And will not permit the Diſſent of two or three Perſons to hinder the Public Good. *Ca. Ch.* 48. *Semb. Contra* 2 *Ver.* 103. *Vide infra.*

So, if a Common is incloſed for thirty Years, *Chancery* will not open it. 1 *Ver.* 32.

So, if a Woman, who has but a ſmall Eſtate in Jointure, will diſturb an Incloſure agreed to by her Husband, by which ſhe received Benefit. 1 *Ver.* 456.

So, an Agreement for Stint of Common ſhall be decreed, tho' two or three diſſent. *R.* 2 *Ver.* 103.

So, if upon an Agreement for Incloſure, ſo much was allotted to the Parſon, it ſhall be decreed; tho' a ſmaller Part is accepted of by the ſucceeding Rector, and confirmed by Decree in Equity. *R. Ch. R.* 144.

But without an Agreement for an Incloſure, or Benefit alledged, the Court will not compel a Freeholder to aſſent to it, tho' he is the only Perſon, who diſſents. 1 *Ch. R.* 259. 2 *Ver.* 103.

So, if the Lord incloſes, by way of Approvement, within the *St. of Merton*; the Court will not eſtabliſh it before a Trial at Law, whether ſufficient Common remains. *R.* 2 *Ver.* 301, 356.

So if a greater Part of the Commoners agree to a Stint of Common; the Court will not inforce the Agreement againſt others, who do not agree. 2 *Ver.* 575. *Vide ſupra.*

(2 Q) Condition.

(2 Q. 1.) How conſtrued.

A Condition ſhall be modified in Equity, in Conformity to the Intent of the Parties: As, if Land is ſettled in Truſt (if *A.* ſecures 500*l.* to his youngeſt Son) to be conveyed after ſuch Security to *A.* and his Heirs; and if *A.* does not ſecure it, *&c.* to *B.* and his Heirs: *A.* does not make the Security; this Condition precedent ſhall be conſtrued and regarded in the Nature of a Penalty, and therefore the Conveyance to *B.* ſhall be ſubject to the 500*l.* for the Portion of the Youngeſt Son. *R. Ca. Ch.* 90. *Vide Condition.*

If an Executor gives a Recognizance, with a Condition abſolute for the Payment of 10,000*l.* to an Orphan, and afterwards the Eſtate of the Teſtator falls ſhort; he ſhall be relieved, and the Condition ſhall be qualified and conformed to the Intent and Equity of the Caſe. *R. Ca. Ch.* 191.

[Bond given as Security for Collector of Cuſtoms extends not to a ſubſequent Duty where Collector has new Deputation and gives Security. *Bartlett* v. *Atorney-general. M.* 8 *Ann. Parker* 277.]

[Or if no Security is given on new Deputation. *Bondage* v. *Attorney-general, M.* 8 *Ann. Parker* 278.]

If a Man deviſes Land to his Daughter, with a Proviſo, that if his Son pays to her 50*l.* he ſhall have the Land; this ſhall be a Condition, and tho' the Son does not pay at the Day, upon which the Daughter ſells it, the Son upon Payment afterwards ſhall be relieved againſt the Vendee. *R.* 2 *Ca. Ch.* 1.

[If *A.* deviſe an additional Legacy to his Daughter, on Condition that ſhe marries a Man who bears the Name and Arms of *A.* and ſhe marries one who three Weeks before the Marriage calls himſelf *A.* it is a good Performance of the Condition, tho' there is no Act of Parliament, and Equity will not decree him to retain the Name. *Barlow* v. *Bateman, T.* 1730. 3 *P. W.* 65.]

[If *A.* deviſes to *B.* 200*l.* provided ſhe marries with Conſent of Father and Mother, ſhe cannot have it till ſhe marries, tho' Father and Mother conſent, for Marriage is a Condition precedent to the veſting. *Garbut* v. *Hilton, M.* 1739. 1 *Atkyns* 381.]

(2 Q. 2.) Breach of a Condition.

If a Condition is literally broken, yet if the Intent and Subſtance of the Condition be performed, it is ſufficient; as, if an Eſtate is deviſed to *A.* upon Condition that (2 Q. 2.) When aided, if the Intent be performed.

that his Father ſettles two Thirds of his Eſtate upon *A.* and the Heirs Males of his Body; if the Father deviſes to him for Life, and afterwards to his firſt and other Sons in Tail Male, it is ſufficient; for it is purſuant to the Intent. *R.* 1 *Ver.* 83.

So, if a Condition is that the Leſſee do not make an Under-leaſe for more than three Years, except to his Wife or Children, without the Conſent of the Leſſor, and the Executor of the Leſſee ſells the Leaſe for the Payment of Debts; the Breach of the Condition ſhall be helped, for the Term was ſubject to Debts. *R.* 1 *Ch. R.* 170.

[If a Man by Will gives Money and Jewels to Truſtees, to ſell and pay his Son's Debts, provided the Creditors, within four Months, accept the Compoſition and diſcharge the Son; if ſo, he gives 600*l.* to his Son, if not, gives it over to his Grand-children, and no Tender is made by the Executors, but within four *Calendar* Months the Creditors file their Bill, accepting the Legacies, and offering to releaſe; it is a Performance of the Condition. *Franco* v. *Alvarez, P.* 1746. 3 *Atkyns* 342.]

(2 Q. 3.) When it ſhall be relieved.

If a Condition be broken, yet it ſhall afterwards be relieved, when it may be afterwards performed: As, if 500*l.* is deviſed to *A.* if his Father releaſes his Right to Goods, and if he refuſes, then the 500*l.* ſhall go to the Executors of the Teſtator; the Father refuſes to make the Releaſe; yet upon a Bill againſt the Father and the Executors, *A.* ſhall be relieved; for the Father may afterwards make a Releaſe. *R.* 2 *Vent.* 352.

Tho' it was deviſed over to the Executors; for that was no more than the Law implied. 2 *Vent.* 352.

So, if a Man deviſes Land to *A.* upon Condition that he pays 1000*l. per Ann.* to his Heir, for 20 Years: If *A.* does not pay at the Day, by which the Heir enters, *A.* ſhall be relieved; for when a Recompence can be made by Intereſt for the Non-payment, Relief ſhall be given. *R.* 1 *Sal.* 156.

So, if the Condition is, that he ſhall pay Debts and Legacies, and the Heir enters for Non-payment. 1 *Ch. R.* 161.

If a Condition in a Leaſe is, that the Leaſe ſhall be void on Non-payment of the Rent and Non-performance of the Covenants; and the Leſſor recovers for not repairing the Houſe; the Leſſee ſhall be aided upon Payment of the Damage, which the Leſſor ſuſtained by the Want of Repair. *R. Eq. Ca.* 91.*

* 2d Part of 2 *Mod. Ca.*

[If *A.* is elected under Dr. *Ratcliffe's* Donation, receives the Salary for five Years, and then, inſtead of travelling for five more, as the Will requires, upon ill Health reſigns, and Truſtees accept, and put another in his Room, he ſhall not refund; tho' if they had refuſed to accept, poſſibly he might. *Attorney-general* v. *Dr. Stephens, P.* 10 *G.* 2. 1 *Atkyns* 358.]

(2 Q. 4.) If a Compenſation can be made. *Vide Poſt,* (2 Q. 9.)

So, when a Compenſation can be afterwards made; as, if the Condition is for Payment of Money at ſuch a Day, and it is not paid at the Day. 3 *Ca. Ch.* 135. 1 *Ver.* 83.

Tho' the Condition is annexed to a voluntary Settlement, or Deviſe. *R. Ca. Ch.* 144.

If a Deviſe is made with a Declaration that the Deviſee, being evicted, ſhall have ſuch Land; the Deviſee being evicted of Part, ſhall have a Compenſation *pro tanto.* 1 *Ver.* 270. *Eq. Abr.* 106.

Tho' there is a Deviſe over, upon Failure of Payment within ſix Months, to another; yet the Time for Payment may be enlarged. 2 *Ver.* 222.

So, if the Deviſe is to *A.* upon Condition that he pays 100*l.* to every one of the Deviſor's Daughters within ſix Months; if the Monies are not paid at the Day, the Deviſee, tho' it is a voluntary Gift, ſhall be aided. *R.* 2 *Ver.* 366.

Or, upon Condition, that he pays to his Daughter, who is alſo his Heir, 100*l. per Ann.* till 300*l.* is paid. *R.* 2 *Ver.* 594.

And, tho' the Daughter enters for Non-payment, and ſells the Land, the Deviſee ſhall be aided againſt the Vendee; for the Condition was in the Nature of a Security for Payment. *Eq. Abr.* 106.

So,

So, if the Condition be that, upon Payment of a Portion to a Daughter by *A.* the Land ſhall go to *A.* and his Heirs, and *A.* dies before the Day of Payment; his Heir upon Payment ſhall have the Land. *R. Eq. Abr.* 107.

If the Condition be that if the Father does not releaſe to the Executor, the Legacy to his Son ſhall be void; if the Father refuſes to releaſe, at firſt, but afterwards does releaſe, the Son ſhall be aided. *Eq. Abr.* 108. 2 *Vent.* 352.

But a Deviſee ſhall not be aided, without paying all Intereſt from the Day of Payment. 2 *Ver.* 594.

Without Deduction for Taxes, tho' directed to be paid by the Deviſee out of his Eſtate. 2 *Ver.* 595.

So, if the Condition is broken by the Fraud or Practice of him, who is to have the Advantage of it. *R.* 1 *Rol.* 374. *l.* 35. *D.* 3 *Ca. Ch.* 134.

(2 Q. 5.) If the Breach was procured by Fraud.

If a Condition is added only *in Terrorem*; as, if a Portion is given to a Woman, upon Condition, that ſhe does not marry without the Conſent of ſuch a Perſon, without a Limitation over; if ſhe marries without the Conſent, yet ſhe ſhall be relieved. *R. Ca. Ch.* 22. *R.* 1 *Ch. R.* 121. *R.* 2 *Ver.* 293, 4. *R. Skin.* 286. *Eq. Abr.* 110.

(2 Q. 6.) If the Condition was *in Terrorem*. *Vide Poſt*, (3 Z. 5, &c.)

[But this is only as to perſonal Eſtates; for if the Portion is to ariſe out of Lands, and there is no Deviſe over, it ſhall go to the Heir; and the Money is to be laid out in Lands. *Pulling* v. *Reddy*, *T.* 16 *G.* 2. *Wilſ.* 21.]

[If a Mother by Will gives her Daughter *A.* 800*l.* if ſhe marry with Conſent of Truſtees in Writing, and not otherwiſe, and charges her real Eſtate with her Debts and Legacies, and *A.* marries without Conſent; this is a perſonal Legacy, and ſhall be paid, (had it been originally charged on Land it ſhould not); and if the perſonal Eſtate is exhauſted by Payment of Debts or Legacies, the real Eſtate ſhall make it good *pro tanto*. *Reyniſh* v. *Martin*, *P.* 1746. 3 *Atkyns* 330. *Wilſ.* 130.]

[If a Man by Will gives 1500*l.* to each of his Grand-daughters on their Day of Marriage, and deſires they ſhould not marry without Conſent, &c. and therefore if any ſhould marry without Conſent, revokes what was to be paid her, and ſhe ſhall not be intitled to any Benefit, *further than the Father and Mother or Survivor of them ſhall direct*; and after the Legacies and Sums directed to be paid are ſatisfied, gives the Reſidue to his Daughter for Life, and then to *B.*; this is not a Deviſe over, but a Power to the Parents to abridge; therefore the Condition is *in terrorem* only, and a Grand-daughter marrying without Conſent ſhall have the 1500*l.* *Wheeler* v. *Bingham*, *T.* 1746. 3 *Atkyns* 364. *Wilſon* 135.]

So, if Land is deviſed upon Condition, that ſhe ſhall not marry. *D.* 3 *Ca. Ch.* 135. *Vide Comyns Rep.* 729. *Skin.* 286.

So, if 200 *l.* are deviſed, *if ſhe behave herſelf dutifully to her Mother*; it ſhall be paid, tho' ſhe marries without the Conſent of the Mother. *R.* 1 *Ch. R.* 122.

But if the Portion of Land is deviſed over to another, if ſhe marries without Conſent; ſhe ſhall not be relieved upon a Marriage without that Conſent. *R. Ca. Ch.* 22. *R. Ca. Ch.* 142. 1 *Vent.* 199. *Fry and Porter. Upon an Appeal from a Decree of the Maſter of the Rolls to the contrary.* 1 *Mod.* 300, &c. 2 *Ver.* 87, 357, 452. *Vide Poſt*, (3 Z. 5, &c.)

[If *A.* by Leaſe and Releaſe limits his Eſtate to himſelf for Life, &c. with a Truſt of a Term, that if there ſhould be a Son and two or more Daughters, the Truſtees were to raiſe and pay to each 2000*l.* if ſhe marry with Conſent of her Mother, and in the mean time directs Maintenances; and if any die before the Portion paid, then it is not to go to her Executor, but the Eſtate to be exonerated of it, or, if raiſed, to go to him to whom the Reverſion of the Eſtate is limited; and afterwards, by Will, *A.* directs 2000*l.* a-piece more to each, out of his perſonal Eſtate, as an Augmentation of her original Portion, and ſubject to the ſame Conditions; and if any dies before the original Portion becomes payable, then this Legacy of 2000*l.* not to go to her Executor, but to his Widow and Executrix: And *A.* dies; and on Bill filed the Court orders the Maintenances to be raiſed im-

immediately, and then two of the Daughters marry without Conſent; they are not intitled either to the original Portion, nor to the Legacies. *Hervey* v. *Aſton*, *P.* 1737. and *T.* 1738. *Per Hardwicke* C. *Lee* C. J. *Willis* C. J. and *Comyn* J. unanimouſly. 1 *Atkyns* 361.]

[If a Condition is annexed by Will to a Deviſe of real or of perſonal Eſtate, (as marrying with Conſent) and no Notice is required to be given, there the Legatees muſt perform the Condition, or they cannot be intitled; and if there is a Deviſe over, Forfeiture incurs. *Chauncy* v. *Graydon*, *T.* 1743. 2 *Atkyns* 616.]

[If one Child forfeits by marrying without Conſent, and next Day another does the ſame; he forfeits the Share of the Forfeiture of the firſt, as well as the original Portion, *Ibid.*]

So, if the Marriage be a Condition precedent to the veſting of the Eſtate. *R.* 3 *Ca. Ch.* 130. *Vide Poſt*, (2 Q. 8.)

Yet a Deviſe to a Woman upon Condition, that ſhe does not marry without the Conſent of *A.* and *B.* and if ſhe does, to ſuch Perſons as *A.* and *B.* ſhall nominate, otherwiſe to *A.* and *B.* themſelves; if ſhe marries without Conſent, the Portion ſhall go to the Truſtees. *R. Ca. Ch.* 58; ſeems as if the Deviſe to Perſons, who are to conſent, ſhews the Intent to be only *in Terrorem.*

[So if *A.* gives his Daughter *B.* 2000*l.* payable at Twenty-one or Marriage, if ſhe marries with Conſent; provided if any of the Legatees die before their Legacy payable, it ſhall be divided between the Survivors; and *B.* marries under Age; it is a Deviſe *in terrorem* only, and the Legacy veſts on the Marriage. *Underwood* v. *Morris*, *P.* 1741. 2 *Atkyns* 184.]

So a Deviſe to Daughters, and, if they marry without the Conſent of the Executors, over to others: If the Daughters arrive at full Age, they ſhall have their Portions; for it ſhall not be intended that they are to be reſtrained to the Conſent of the Executors, but only whilſt under Age. *R. in Canc. int. Lloyd and Hughes*, *T.* 2 *Jac.* 2. *Semb. cont.* 452.

If a Woman releaſes her Portion charged upon Land by her Grandfather, at the Requeſt of her Father, who promiſes to make an Improvement and to take Care of her Portion, and afterwards deviſes, that the Portion ſhall be paid, if ſhe marries with the Conſent of his Executor, otherwiſe he gives her only the Intereſt thereof for her Life; tho' ſhe marries without Conſent, all the Portion ſhall be paid; for it was a Debt to her from her Father. *R. Ch. R.* 145.

If a Deviſe is to a Daughter, and if ſhe does not marry with the Conſent of the Executors, to the Daughters of one of the Executors; if *A.* makes his Addreſſes to the Daughter, with the Privity of the Executors, and afterwards marries her, he ſhall have the Portion, tho' there was no expreſs Conſent. *R.* 2 *Ver.* 580.

[If a Fortune is ſettled on *A.* provided ſhe marries with Conſent of three Truſtees, if not, over to others; and *B.* makes a Propoſal to one of the Truſtees, who communicates it to the other two; they all diſapprove of it, unleſs the Father of *B.* will make a better Settlement, and write a Letter to that Purpoſe to their Agent, and ſay "*If he does*, we believe the young Folks are too far engaged, and *we ſhall* "*be obliged to conſent*;" and by another Letter to their Agent they refuſe to conſent on any other Terms; and *B.* and *A.* marry privately, and after that *B.* applies to the other two Truſtees, who tell him they will not conſent but on the above Terms: Yet if there is no Objection to the Perſon or Eſtate of *B.* and the Settlement is not diſparaging, the Words *we ſhall be obliged to conſent*, ſhall be conſtrued a preſent Conſent, and the Condition well performed. *Daley* v. *Deſboeverie*, 1738. 2 *Atkyns* 261.]

So, if a Deviſe is to *A.* upon Condition, that he does not diſpute his Will; it will not be a Breach, if there is a probable Ground of Conteſt. *R.* 2 *Ver.* 91. [*Morris* v. *Burroughs*, *H.* 1737. 1 *Atkyns* 399. *Lloyd* v *Spillet*, *M.* 1734. 3 *P. W.* 344. *H.* 1740. 2 *Atkyns* 148.]

If a Man charges Land with a Portion for his Daughter, at the Age of twenty-one, or Marriage; but if ſhe marries without the Conſent of her Mother during her Life, (who was her Guardian), Part thereof to go to the Payment of his Debts:

Debts: After the Age of twenty-one, a Marriage without that Conſent does not forfeit any Part of the Portion. *R. Eq. R.* 26. *Reverſed Temp. G.* 2. *Vide Comyns's Rep.* 726.

[A Proviſion on Condition, by an elder Brother for younger Children unprovided for, ſhall be conſtrued in the ſame Manner as Proviſion by a Father. *Berkeley* v. *Ryder*, *T.* 1752. 2 *Vezey* 429.]

[Money to be paid *nomine pœnæ* for Non-payment of the principal Sum, ſhall only ſtand as a Security for legal Intereſt for it. *Aylet* v. *Dod*, *H.* 1741. 2 *Atkyns* 238.]

[But a *Nomine pœnæ* in a Leaſe to a Tenant, to prevent breaking up old Paſture Ground, is otherwiſe, and the Whole ſhall be paid. *Ibid.*]

(2 Q. 7.) If it was broken only in Circumſtances; or became impoſſible by the Act of God.

If a Condition is broken only in Circumſtances, but the Subſtance is performed; as, if the Condition be, that the Party ſhall not do a Thing, without Conſent in Writing, and there be a Conſent without Writing. *Ca. Ch.* 141. 3 *Ca. Ch.* 130.

If an Eſtate is deviſed upon Condition, that the Deviſee ſhall convey two Parts to *A.* and if he does not, deviſed over to another; if he does not convey exactly two Parts, but *tantamount* in Value, it is ſufficient. *R. Ca. Ch.* 131.

[If a Man deviſes Lands to *B.* and his Heirs, on Condition that he marries *C.* and *B.* by Bill declares himſelf ready to marry her, and ſhe by her Anſwer declares ſhe will not marry him, and afterwards marries another, and dies; the Condition is diſpenſed with. *Robinſon* v. *Comyns*, *H.* 9 *G.* 2. *C. T. T.* 164.]

So, if a Condition ſubſequent becomes impoſſible by the Act of God. *D.* 3 *Ca. Ch.* 135. *Vide* 1 *Ver.* 83.

[If a Man gives 1000 *l.* to his Daughter, to be paid at Twenty-one or Marriage, provided ſhe marry with Conſent of Executors, if ſhe dies before the Money payable on theſe Conditions, the Money to his Sons; and all the Executors die before ſhe marries, ſhe is intitled to the 1000 *l.* *Graydon* v. *Hicks*, *M.* 1739. 2 *Atkyns* 16.]

[But if there is an Adminiſtrator with the Will annexed, his Conſent is required. *Ibid.*]

(2 Q. 8.) When it ſhall not be relieved. Where the Condition is precedent.

But if the Eſtate is limited upon a Condition precedent, the Breach generally ſhall not be relieved. *R. Ca. Ch.* 130, 135. *D.* 1 *Ver.* 83.

As if an Eſtate is deviſed to *A.* if ſhe marries to ſuch a one, otherwiſe to *B.* if ſhe does not marry the ſame Perſon, the Eſtate does not veſt, and ſhe ſhall not be relieved. *R.* 3 *Ca. Ch.* 130. 2 *Ver.* 338, 9.

Yet where the Condition precedent is not performed, but there was no Default in the Party, who omits the Performance, *Chancery* will give Relief; as, if a Deviſe is to *A.* for three Years, and if a Lady, who was his Heir at Law, intermarries with *B.* within three Years, then to her and the Heirs of her Body: If the Marriage was omitted by the Default of *B.* *Chancery* will relieve. *R. Cont. in Chancery, but the Decree was reverſed in Parliament.* 1 *Sal.* 232.

If a Man deviſe that, if his Daughters releaſe to his Heir ſuch and ſuch Lands, he gives them ſuch and ſuch Portions; and one of the Daughters dies before the Releaſe, the Reſt ſhall be relieved; for ſuch a Breach may be compenſated. *Semb.* 1 *Ver.* 222, 3.

If the Deviſe be, that if *A.* ſecures 500 *l.* to his Daughters, the Truſtees ſhall convey to *A.* and his Heirs; if *A.* dies before the 500 *l.* is ſecured, if it was afterwards ſecured, the Truſtees ought to convey. *Ca. Ch.* 89. *Eq. Abr.* 107.

(2 Q. 9.) Where Recompence cannot be made. * 2d Part of 2 *Mod. Ca.*

So, Equity does not relieve for a Condition broken, where there is no proper Meaſure for Recompence: As, if the Condition is, that a Leaſe ſhall be void, if the Leſſee aſſigns without Licence. *R. Eq. Ca.* 113.*

So, tho' the Condition is ſubſequent, there ſhall be no Relief, if there cannot be a Compenſation for it. *Eq. Abr.* 108.

(2 Q. 10.) If the Relief is not prayed in convenient Time.

So, if a Leſſor enters for a Condition broken, and recovers in Ejectment, and offers to take his Arrears of Rent and Coſts, which *A.* the Aſſignee of the Leaſe refuſes, for which Reaſon the Leſſor demiſes to another: *A.* ſhall not afterwards be relieved, againſt the Breach of the Condition, in Equity. *R.* 1 *Ver.* 450.

So, if the Condition is that by Non-payment, the Eſtate ſhall ceaſe both in Law and Equity; if the Party does not pay at the Day, he ſhall not be relieved, it being a voluntary Settlement. 1 *Ver.* 456, 7. *Cont.* 2 *Ver.* 366. *Vide Ante*, (2 Q. 4.)

If a Deviſe is to the eldeſt Daughter, upon Condition, that if ſhe does not pay ſo much to the other Daughters within ſix Months, it ſhall go over to the ſecond Daughter, upon the ſame Condition, and if ſhe does not pay, to the third, &c. After ſix Months the eldeſt Daughter ſhall not be relieved. *Dub.* 2 *Ver.* 166. *Vide* 2 *Ver.* 222. *Contra.*

So, if a Deviſe is to the eldeſt Son by a ſecond Wife in Tail, and if he dies without Iſſue, to the eldeſt Son by a former Wife, upon Condition that he pays 1000 *l.* to the Daughters by the ſecond Wife; the Tenant in Tail ſuffers a Recovery of a Moiety, and then dies without Iſſue; the eldeſt Son by the firſt Wife ſhall not have the Land, without Payment of the whole 1000 *l.* *Eq. Abr.* 106. 2 *Ver.* 359.

But a Deviſe to three Daughters, upon Condition, that they releaſe all their Share to the Eſtate of the Teſtator, ſhall be conſtrued diſtributively; and each of the Daughters releaſing ſhall have her Legacy. *Eq. Abr.* 106. 2 *Ver.* 478.

(2 R) Confirmation.

IF Tenant for Life makes Building-Leaſes, for the Advantage of the Eſtate, to which the Remainder-Man conſents by *Parol*; he ſhall be decreed to make a Confirmation, after the Death of the Tenant for Life. *R.* 2 *Ca. Ch.* 28.

Vide Confirmation.

(2 S) Contribution.

Vide Ante, (2 I.)

IF a Charge is upon a Manor, &c. and the Whole is levied upon one Tenant; the Court will make all liable to make Contribution.

As Perſons, who purchaſe Part of a Manor ſubject to a Charge. *R. Hard.* 131.

[But if Tenant in Tail, ſubject to an Incumbrance, ſuffers a Recovery of Part, and exchanges it for other Lands; this is not ſubject to a Contribution to the Incumbrance, the Whole of which muſt be paid by the Remainder. *Kirkham* v. *Smith*, *T.* 1749. 1 *Vezey* 258.]

So, if one Surety pays the whole Debt, *Chancery* will make the other contributory for his Proportion. *Ch. R.* 203. *Vide Poſt*, (4 D. 6.)

If there is Judgment in Debt againſt the Sheriffs of *London*, for an Eſcape, and one pays the whole Money; he ſhall have Contribution againſt the other Sheriff, and, if he is dead, againſt his Executor. *Dub. Hard.* 164.

But the antient Tenants or Copyholders of a Manor are not liable to a Contribution towards a Bridge-Wall, to which the Manor is charged. *R. Hard.* 131.

Tho' the Copyholders are enfranchiſed of late Years; for that only varies the Tenure. *Hard.* 131.

(2 T.) Conveyance.

(2 T. 1.) When aided.

(2 T. 1.) When there is a Miſtake in the Deed, *Vide Poſt*, (2 T. 6.)

CHANCERY will aid a Miſtake in a Conveyance or other Deed; as if in a Leaſe, &c. by a Corporation, the Body Politick is miſnamed.

So, if the Name of the Leſſor, or of the Leſſee, is omitted, or miſtaken.

So, if Land in *A.* in the Tenure of *John D.* where it was intended *Ralph D.* is conveyed; and *John D.* holds nothing there; it ſhall be aided. *Dub.* 2 *Ca. Ch.* 43.

If a Farm called *Haſledon* is conveyed as lying in *A.* when it lies in *A.* and *B.* and the Party hath declared that he had conveyed ſuch a Farm; it ſhall be ſo decreed. *R.* 2 *Ca. Ch.* 68.

So, if in the Conveyance of an Inheritance, the Word, *Heirs*, is omitted.

So, if Part of the Land intended to be conveyed is omitted. (2 T. 2.) When Part of the Land is omitted in the Deed.

As, if the Deed conveys only one Meſſuage, with the Appurtenances; other Lands, demiſed with the Meſſuage, and occupied under the ſame Leaſe, at the ſame Rent, and intended to be purchaſed, ſhall be compriſed.

So, if more Land is inſerted, than was intended to be conveyed; as, if a Copyhold is eſcheated, and afterwards the Manor is conveyed by Words ſufficient to paſs that Copyhold, but it was not inſerted in the Particular, nor intended to be granted in Demeſne; the Vendor ſhall have a Decree to hold it by Copy of the Purchaſer. *R.* 2 *Vent.* 345. (2 T. 3.) When more is inſerted, than was intended. *Vide Poſt*, (4 L. 2.)

So, if more Land is inſerted in a Fine than was intended to be compriſed.

So, where a Covenant is general, and the Party is ſeiſed, when the Intent was that he ſhould covenant only againſt his own Act. *R. Ca. Ch.* 15.

So, if a Conveyance is loſt, *Chancery* will inforce a new Aſſurance. (2 T. 4.) When the Conveyance is loſt.

So, where a Conveyance was pretended but not proved, but the Guardian of the Defendant articled for the Enjoyment, and gave Poſſeſſion to the Plaintiff, the Court decreed for the Plaintiff. *Ca. Ch.* 48.

[If there is Proof that the Deed was *deſtroyed* by a Party, the Court will relieve; but if it is *loſt*, the Matter muſt be determined at Law. *Aſkew* v. *Poulterer's Company*, *M.* 1750. 2 *Vezey* 89. *Clavering*, v. *Clavering*, *H.* 1750. 2 *Vezey* 233.]

So *Chancery* aids a defective Conveyance; as where, upon a Feoffment, Livery is omitted. *Ca. Ch.* 240. (2 T. 5.) When the Conveyance is defective.

If a Bargain and Sale is not enrolled. 1 *Ch. R. E. of Oxford* 10.

If to a Grant of a Reverſion, there is no Attornment.

[If a Rent-charge is limited to *A.* and after her Deceaſe to the Heirs of her Body, and ſuch Heir during her Life conveys to *B.* without Fine, which would operate as as an Eſtoppel if he ſurvived her; after *A.*'s Death, *B.* is intitled to further Aſſurance from the Heir, and to make Uſe of his Name to recover Arrears. *Whitfield* v. *Fauſet*, *H.* 1749. 1 *Vezey* 387.]

If a Copyhold is ſurrendered by way of Mortgage for Money, and the Surrender is not preſented, *R. Ca. Ch.* 171.

Or, if there is a Defect in the Surrender. 1 *Ch. R.* 108.

If a Leaſe is made to *A.* and *B.* and their Heirs *habend.* for 99 Years, where it was for Payment of Debts. *R. Ca. Ch.* 249. *Vide Poſt*, (4 W. 14.)

So, where no Surrender appears to a Copyhold, after a Poſſeſſion of forty Years. *R.* 1 *Ver.* 195. 2 *Ca. Ch.* 150.

If no Livery appears to a Leaſe for Life, after a Poſſeſſion for twenty-five Years. *R.* 1 *Ver.* 196.

If Livery is wanted to a Feoffment by Tenant in Tail, which makes a Diſcontinuance. *Ca. Ch.* 240.

If *A.* revokes a prior Settlement, and covenants to ſtand ſeiſed for the Benefit of his Son upon his Marriage, but the Words, *Shall ſtand and be ſeiſed*, are omitted. *R.* 1 *Ch. R.* 163.

If *A.* upon a Loan of Money gives a Letter of Attorney to confeſs Judgment in Ejectment for ſuch and ſuch Lands. *R.* 2 *Ver.* 151.

So, if a Man upon his Marriage ſettles an Eſtate for the Jointure of his Wife, in the ſame Manner as if he had the Inheritance; and afterwards the Inheritance is evicted, and it appears that the Huſband had only a Term for Years; the Wife ſhall have the Term for her Life. *R. Ca. Ch.* 47. (2 T. 6.) Or, miſtaken. *Vide Ante*, (2 T. 1.)

If a Bond is made in the Penalty of 40 *l.* for the Payment of 200 *l.* it ſhall be aided; for it was a Miſtake. *R.* 2 *Ca. Ch.* 225.

So, if the Huſband having a Term conveys it to his Wife and her Heirs by Leaſe and Releaſe, in Conſideration of a Bond cancelled, which was given for the making

ing of a Jointure for the Wife; and the Wife deviſes it and dies: The Huſband ſhall aſſign the Term to the Deviſee. *R. Eq. Ca.* 143.

[If by Articles and Settlement in the ſame Words, and both before Marriage, Huſband is made Tenant for Life without Waſte, Remainder to the Heirs male of his Body, with Power to raiſe Portions for younger Children, and levies a Fine, this ſhall be rectified by Chancery for the Son, and the Father made Tenant for Life only; for it is nugatory in Settlement for valuable Conſideration to make him Tenant in Tail: But if Son has a Benefit by his Father's Will, he muſt make his Election. *Roberts* v. *Kingſley*, *P.* 1749. 1 *Vezey* 238.]

(2 T. 7.) If it is aided, it ſhall be in the ſame Plight, as it would have been, if it had been right *in initio*.

If a defective Conveyance is aided, it ſhall be diſcharged of *meſne* Incumbrances by the Party; as if a Mortgage wants Livery, and thereupon the Heir confeſſes Judgments to another; the Mortgagee ſhall be relieved, and diſcharged from the Judgments. *R. Ch. R.* 29.

A Leaſe not being made purſuant to an Agreement, if the Leſſor afterwards ſettles the Reverſion in ſuch Manner, that the Covenants of a former Leaſe may be performed on the Part of the Leſſor; if the Leſſee performs his Part, Equity will aſſiſt him to detain Poſſeſſion, as if the prior Leaſe had Continuance. *R. Eq. Ca*, 59.*

* 2d Part of 2 *Mod. Ca.*

(2 T. 8.) When a Conveyance ſhall not be aided.

Vide Poſt, (4 S. 2.) But if Tenant in Tail bargain and ſell his Land, *Chancery* will not decree a Fine or Recovery, tho' the Vendor had Power to levy them. *Dict.* 2 *Vent.* 350.

[If *A.* Remainder-man in Tail, expectant on the Death of his Uncle, Tenant for Life being diſtreſſed, conveys Manors of 300*l. per Annum* for 300*l.* to *B.* his Heirs and Aſſigns, after the Uncle's Death without Iſſue-male, it is void in Law, and ſhall not be aided in Equity. *Barnardiſton* v. *Lingood*, *H.* 1740. 2 *Atkyns* 133.]

So, a Conveyance ſhall not be helped upon a ſubſequent Communication. 2 *Ch. R.* 107.

Nor a Defect in Articles, after a Conveyance executed. *R.* 2 *Ch. R.* 107.

(2 T. 9.) If it be voluntary. *Vide Ante*, (2 C. 8.) *Poſt*, (4 H. 9.—4 O. 7.)

So, if a voluntary Conveyance is defective, *Chancery* will not aid it. 2 *Vent.* 365. *Semb. Ca. Ch.* 47. 1 *Ver.* 456. 1 *Ch. R.* 147, 8.

So, if *A.* covenants to make a Jointure of 500*l. per Ann.* without ſaying of what Lands, and afterwards ſettles a Farm in *A.* of 50*l. per Ann.* and then makes a voluntary Settlement of 200*l. per Ann.* if Part of the Farm lies in *B.* it ſhall not be decreed againſt the Heir, tho' a Jointure was not ſettled to the Value agreed; for as to that Eſtate the Conveyance was voluntary. *R.* 2 *Ca. Ch.* 68.

If a Man ſettles Lands in *A. B.* and *C.* upon himſelf for Life, and then to his Iſſue, and for Default thereof to his Nephew *H.* the Lands in *A.* and to his Nephew *L.* the Lands in *B.* and *C.* omitting one Farm; Equity will not ſupply the Omiſſion, tho' proved to be a Miſtake. *R.* 1 *Ver.* 38.

Yet a Deviſee ſhall not be aided againſt a voluntary Settlement made without a Power of Revocation. 1 *Ver.* 100.

A *fortiori* if there be a voluntary Conveyance for the Proviſion of younger Children, it ſhall be aided. 2 *Vent.* 365. 1 *Ver.* 40, 132.

So, a Leaſe ſhall be decreed to attend the Inheritance ſettled by a voluntary Conveyance. 1 *Ch. R.* 37.

So, if Articles upon Marriage are, that Money ſhall be veſted in a Purchaſe of Land to be ſettled upon the Huſband and Wife for Life, then to the Iſſue of their Bodies, then to the right Heirs of the Huſband; he and his Wife die, and their Children die; the Heir of the Huſband ſhall inforce the Settlement. *Cont. per North, and afterwards decreed*, 1 *Ver.* 298, 471. 2 *P. W.* 255.

So a Woman, intitled to Dower, ſhall be aided againſt a defective Settlement, Surrender, or Execution of a Power. *R.* 2 *P. W.* 637. *Vide Poſt*, (3 Z. 1.)

So a Covenant, that a Limitation in Fee being by Miſtake made to him and his Heirs, the Party will ſtand ſeiſed to the Uſe of his Wife and her Heirs, ſhall be decreed. 2 *P. W.* 464.

A Con-

A Conveyance, Covenant, &c. being by Deed, *primâ facie* imports a Conſideration. 2 *P. W.* 467.

As, if a Father aſſigns a College-Leaſe to a Son, and covenants to renew. 2 *P. W.* 467.

So a defective Conveyance ſhall not be aided againſt him, who has an Eſtate upon a good Conſideration; as, if a Surrender of a Copyhold ſold or mortgaged is not preſented, but afterwards the Vendor ſurrenders it to the Uſe of his Will, and deviſes it to his Wife for Life, upon whom he had agreed to ſettle it upon their Marriage; the Vendee ſhall not be relieved againſt the Wife. *R. Ca. Ch.* 171. (2 T. 10.) Or, againſt him, who has an Eſtate upon good Conſideration. *Vide Ante*, (2 C. 8.)

[If a Rent-charge is limited to *A.* and after her Death another Rent-charge to the Heirs of her Body, and *A.* and her Huſband levy Fine of the Lands, and ſell them to *B.* and the Heir during her Life ſells the Rent-charge to *C.* this Sale ſhall not put *B.* in a worſe Condition, or liable to a different Remedy than would have been to the Heir, and *C.* Purchaſer of an equitable Title muſt try it againſt *B.* at Law. *Whitfield* v. *Fauſſet*, *H.* 1749. 1 *Vezey* 387.]

If a Mortgage to *A.* is defective, it ſhall not be aided againſt him, who has a ſubſequent Mortgage by a good Aſſurance. *Eq. Abr.* 320.

(2 T. 11.) When a Conveyance ſhall be avoided.

So a fraudulent Conveyance ſhall be avoided in Equity; as, if it be obtained by falſe Information. 3 *Ca. Ch.* 74. *Vide Poſt*, (3 M. 1.—4 L. 1.) *Vide Ante*, (2 C 12.)

By Inſinuation of a Match to be obtained thereby. 1 *Ver.* 206.

A Remainder *to the Huſband* in a Marriage Settlement, to which the Wife objected at reading, and denied ſhe had deſired it, (tho' his Attorney had told *him* ſo) but executed the Writings as Remainder was remote, and the Parties unwilling to defer, may be ſet aſide as a Fraud and Impoſition. *Morris* v. *Nixon*, *H.* 5 *G. Str.* 144.]

So, if there is a Suſpicion of an Impoſition: As, where a Woman levies a Fine of her Eſtate to the Uſe of *B.* and his Heirs, but at the Time declares it is neceſſary for her to have a Truſtee, and by her Will declares that ſhe had levied a Fine in Truſt for herſelf, and deviſes the Eſtate to *C.* and his Heirs, ſubject to the Payment of Debts, and *B.* gave no Conſideration, he ſhall be decreed to convey to *C.* *R.* 2 *Ver.* 307.

[If a Man is arreſted by due Proceſs, and then executes a Conveyance never under Conſideration before, the Court will conſtrue it *dureſs*, and relieve againſt it. *Nichols* v. *Nichols*, *M.* 1737. 1 *Atkyns* 409.]

[Tho' a Man has a real Intention of diſinheriting his Heir at Law, yet if it is owing to Fraud and Impoſition, this will fetch it back and reveſt it in the Heir. *Bennet* v. *Vade*, *T.* 1742. 2 *Atkyns* 324.]

[If a voluntary Conveyance is made by a very weak Man, in Favour of one who has great Power and Influence over him, and of others who have no Merit with him, and the Deed contains a Proviſo, reſtraining him during his Life from taking a Fine, or leaſing without the full Rent, and a Power of Revocation only in the Preſence of three Perſons by Name, who could hardly be aſſembled, and the Deed is executed without being read to him, and no Part is left with him, it ſhall be delivered to the Heir at Law, and Poſſeſſion of the Eſtate given him, and the Truſtees convey to him. *Ibid.*]

[But if there is a Proviſion for Creditors in it, that ſhall be ſaved to them. *Ibid.*]

[If a Counſel procures from his Client a Grant of the Stewardſhip of a Manor in Fee, it is not only *ipſo facto* void, as it might come to a Woman; but if it appears the Grantor did not read it, nor know what the Import of *his Heirs* was, and only intended to give it during Pleaſure, it ſhall be delivered up. *Thornhill* v. *Evans*, *T.* 1742. 2 *Atkyns* 330.]

[If Deviſees ſubmit their Differences to Arbitration, and an Award is made, that the Lands ſhall be conveyed in the ſame Manner as they are given by the Will, and

thereupon by Deed to lead the Uſes of Recovery the Lands are declared to be to *A.* for Life, whereas ſhe is intitled to them in Fee by the Will, the Court will order them to be conveyed to her in Fee. *Ridout* v. *Pain*, *P.* 1747. 3 *Atkyns* 486.]

If an Infant has the Truſt of an Eſtate, and *A.* enters and levies a Fine, and five Years paſs; tho' the Infant is barred by the Fine and Non-claim at Law, becauſe the Truſtees were of full Age, yet the Fine ſhall be avoided in Equity, by a Bill brought within five Years after the Infant's full Age. *R.* 2 *Ver.* 369.

If one Parcener obtains an Aſſignment of the Part of the other for 20 *l.* Conſideration, and upon a falſe Suggeſtion, that a large Fine was to be paid for the Admiſſion to the Eſtate, when the Eſtate was of 200 *l. per Ann.* Value, and only a ſmall Fine due; ſuch Aſſignment ſhall be avoided. *R. Eq. Ca.* 85.*

* 2d Part of 2 *Mod. Ca.*

[If *A.* Tenant for Life, prevails on his Daughter Tenant in Tail, to join in a Recovery (to prevent the Eſtate's falling into her Huſband's Creditors Hands) to him and his Heirs, promiſing to be only a Truſtee for her, and then mortgages it, but pays her an Annuity of 30 *l. per Annum*, becomes Bankrupt and dies, and the Daughter dies; the Recovery ſhall be ſet aſide, and on the Heirs in Tail refunding the 30 *l. per Annum* received, the Aſſignees of the Bankrupt ſhall aſſign to them, and the Mortgagee on Payment reconvey to them, and they come in Creditors under the Commiſſion for the Mortgage Money. *Young* v. *Peachy*, *H.* 1741. 2 *Atkyns* 254.]

And a Conveyance obtained by Fraud or Impoſition ſhall be avoided, tho' it is confirmed by Fine and ſeveral Approbations of the Party. 1 *Ver.* 206.

So a Conveyance by the King's Patent may be avoided by Bill in Equity for Deceit, or Impoſition on the King. *R.* 1 *Ver.* 277, 387, 390.

[If a Guardian purchaſes his Ward's Eſtate immediately on his coming of Age, tho' it has a ſuſpicious Look, yet if he paid a full Conſideration, it ſhall not be ſet aſide. *Oldin* v. *Samborne*, *M.* 1737. 2 *Atkyns* 15.]

[If *A.* grants an Annuity to *B.* in Conſideration of his Learning, and the Love he bore him, it is not a valuable Conſideration. *Stiles* v. *Attorney-general*, *H.* 1740. 2 *Atkyns* 152.]

[But if *B.* gave up a pecuniary Advantage at the Requeſt of *A.* it amounts to a valuable Conſideration. *Ibid.*]

[Or if there be Arrears on the voluntary Annuity, and *B.* promiſes not to ſue for theſe Arrears, and *A.* thereon grants the Annuity afreſh, this is a valuable Conſideration, and alſo for an additional Annuity. *Ibid.*]

(2 T. 12.) When not.

(2 T. 12.) Tho' made upon a falſe Suggeſtion.

But it is not ſufficient to avoid a Conveyance, that it was obtained upon falſe Inſinuations; as, if a Man falſly perſuades another that his Son is dead, and thereby obtains a Deviſe of the Eſtate to himſelf. *Vide Poſt*, (3 A. 2.)

If a Man under an Arreſt is concealed, and denied to his Relations, and perſuaded to make a Deviſe of his Eſtate to a Stranger. *R.* 3 *Ca. Ch.* 61, 94, 103.

(2 T. 13.) Tho' it becomes unreaſonable by Matter *ex poſt facto*.

So it is no Reaſon for avoiding a Settlement, that it became unreaſonable by Matter *ex poſt Facto*; as, a Marriage Settlement, which ſettles a Jointure equivalent to a Portion, and a Security to repay the Portion alſo, if the Huſband dies without Iſſue, ſhall not be avoided, if the Huſband dies without Iſſue within a Week. *R. in Chancery, and confirmed in Parliament. Ca. Parl.* 21.

[If *A.* intitled to Reverſion after Death of Tenant for Life, (then unmarried, but to whoſe firſt and and other Sons there are Remainders) ſells Reverſion, and Tenant for Life dies in a Month, the Conveyance ſhall not be ſet aſide if no Fraud. *Nichols* v. *Gould*, *T.* 1752. 2 *Vezey* 422.]

If a Man for 350 *l.* gives Security by Mortgage of a Reverſion, after two Lives, for 700 *l* to be paid when the two Lives fall; he ſhall not be relieved, tho' the Lives fall within two Years. 1 *Ver.* 141.

But if an Apprentice is turned away before the Time for which he ought to ſerve, tho' occaſioned by his Negligence, the Maſter ſhall refund Part of the Money. *R.* 2 *Ver.* 64.

If

If there is an Agreement for the Purchaſe of a Houſe, which is conſumed by Fire before the Conveyance of it, the Purchaſer ſhall be aided. 2 *P. W.* 220. *Vide Ante*, (2 C. 9.)

So a Conveyance ſhall not be avoided, becauſe it was made or executed by Surprize; as, that it was not read by the Party, or to him; except where it otherwiſe appears to be contrary to his Intention. *R. Ca. Ch.* 56, 59, 76. (2 T. 14.) When a Surprize or a ſmall Miſtake is alledged.

If there are many Miſrecitals. 3 *Ca. Ch.* 56, 59, 76.

If the Counſel was negligent, or unſkilful. 3 *Ca. Ch.* 56, 76.

If there was no Counterpart. 3 *Ca. Ch.* 83.

Or the Truſtees mentioned in the Deed have no Notice of it. 3 *Ca. Ch.* 83.

If a Recital is repugnant to the Deed. *Per Holt Ch. J.* 3 *Ca. Ch.* 101.

Or any Part material, to that which is immaterial. 3 *Ca. Ch.* 101.

So it ſhall not be avoided after twenty Years, upon Pretence that the Perſon who conveyed was *non compos*. 1 *Ch. R.* 40. (2 T. 15.) After a long Acquieſcence

So it ſhall not be avoided by him, who claims by a ſubſequent voluntary Settlement, tho' the firſt Conveyance was alſo voluntary. (2 T. 16.) At the Requeſt of him who has only a voluntary Conveyance. *Vide ante*, (2 C. 8.—2 T. 9.)

As, if the Manor of *L.* is ſettled to pay 100 *l. per Ann.* to a Younger Son, and the Reſidue to the Elder; and afterwards the Father, having the Settlement in his Cuſtody, ſettles the ſame Manor upon the Younger Son and his firſt and other Sons in Tail, and ſettles Lands of greater Value upon his Eldeſt Son; Equity will not avoid the prior Settlement of the Manor. *R.* 2 *Ver.* 475.

If *A.* having by a voluntary Settlement given an Eſtate to *B.* without a Power of Revocation, afterwards deviſes it to *D.* the Deviſee ſhall not avoid the prior Settlement; for he alſo claims by a voluntary Act. *Eq. Abr.* 23. 1 *Ver.* 100. *Vide Ante*, (2 T. 9.)

[A voluntary Deed without Power of Revocation, formally executed, tho' informal in ſeveral Parts, kept by the Perſon but never cancelled, ſhall not be ſet aſide by a ſubſequent Will. *Boughton* v. *Boughton*, *M.* 1739. 1 *Atkyns* 625.]

So, if *A.* upon his Marriage makes an extravagant and unreaſonable Settlement, if no Circumvention or Incapacity appears, it ſhall not be avoided by thoſe who claim by a ſubſequent Marriage Settlement. *Semb. Eq. Ca.* 80.* * 2d Part of 2 *Mod. Ca.*

(2 V) Copyhold.

SO a Bill lies for the Severance of Copyhold and Freehold Lands intermixed.

[The Expences of a Commiſſion to ſeparate Freehold and Copyhold Lands, ſhall be borne by both Parties equally, tho' their Intereſts are of different Values. *Norris* v. *Leneve*, *P.* 1744. 3 *Atkyns* 82.]

So, to aſcertain the Cuſtoms of a Manor. *Ch. R.* 114.

So, to aſſign Timber to a Copyholder, Eſtovers, *&c.*

So, for the Surrender of a Copyhold, purſuant to an Agreement with a Purchaſer, where the Copyholder refuſes to perform, or dies before Performance.

Tho' it be a Copyhold for Lives, as well as in Fee; where the Copyholder hath the ſole Power to ſurrender, tho' by his Death, it veſts by Cuſtom in another Nominee. 1 *Ch. R.* 274.

So, to ſupply a Surrender for Payment of Debts, or Proviſion for a Wife or Younger Children. 2 *P. W.* 490. *Vide Copyhold*, (P. 2.)

[If one by his Will charges all his worldly Eſtate with his Debts, and dies ſeized of Copyhold which he particularly deviſes, it ſhall be applied *pari paſſu* with the Freehold, tho' there is no Surrender to the Uſe of the Will. *Harris* v. *Ingledew*, *H.* 1736. 3 *P. W.* 91.]

[If a Man deviſes all his Eſtate to his Son, ſubject to Payment of Debts, and has only Copyhold, the Defect of Surrender ſhall be ſupplied, that ſomething may paſs. *Ithell* v. *Beane*, *H.* 1748. 1 *Vezey* 215.]

[The Court will ſupply the Defect of a Surrender of Eſtate deviſed in Favour of a younger Son, tho' ſome other Proviſion had been made for him, and tho' this was only a Remainder after Eſtates for Life and in Tail, and tho' the Heir at Law had ſurrendered to the Uſe of his Will and deviſed to his Mother. *Cook* v. *Arnham*, *T.* 8 *G.* 2. *C. T. T.* 35. 3 *P. W.* 283.]

[If *A.* deviſes all his Freehold and Copyhold Lands in *S.* and *M.* to his Wife, her Heirs, *&c.* being aſſured ſhe will leave them to *ſuch* Children as deſerve them, and ſhe deviſes all her Freehold and Copyhold Lands, except the Copyhold in *H.* to her Daughter, and deviſes the Copyhold in *H.* to her Son, and intends ſurrendring, but dies without it, and another Copyhold deſcends to the Son; the Court will eſtabliſh the Wills, and ſupply a Surrender. *Macey* v. *Shurmer*, *M.* 1739. 1 *Atkyns* 389.]

[*A.* having ſeveral Copyholds, ſome ſurrendred to the Uſe of his Will, others not, one only a Truſt-Eſtate, the other in his own Name; he deviſes all his Copyholds to *B.* his Grandſon, his Heirs, *&c.* and deviſes ſeveral Legacies to his eldeſt Son, all the Copyholds paſs; for the eldeſt Son claiming under the Will muſt admit the Whole. *Allen* v. *Poulton*, *M.* 1748. 1 *Vezey* 121.]

[But if a Man deviſes his real Eſtate to be ſold to pay Debts and Legacies, and ſubject thereto deviſes all his Perſonal Eſtate to his Siſter, whom he makes Executor; the Court will not ſupply the Defect of a Surrender of Copyhold, if the other Eſtates are ſufficient. *Mallabar* v. *Mallabar*, *P.* 8 *G.* 2. *C. T. T.* 78.]

[If *A.* having Freehold but no Copyhold Lands ſettled, deviſes all his Lands unſettled, and all his Goods and Chattles, to his Wife for Life, then to his younger Children as ſhe thinks fit, and dies, leaving Freehold and alſo Copyhold unſettled, and not ſurrendered to the Uſe of his Will; the Copyhold does not paſs by the Will. *Hawkins* v. *Leigh*, *M.* 1737. 1 *Atkyns* 387.]

[Copyhold Lands ſurrendred to the Uſe of the Will, paſs by the general Words of all Meſſuages, Lands, Tenements, and Hereditaments, tho' Teſtator has Freehold; eſpecially if it appears by the Will that he intended that *all* his Eſtate ſhall paſs. *Goodwyn* v. *Goodwyn*, *H.* 1748. 1 *Vezey* 226.]

[If *A.* deviſes Copyhold, among other Eſtates, to *B.* his Heir at Law for Life, with Remainders over to *C.* *B.* gets the Eſtate infranchized, calling himſelf Executor and Deviſee of *A.* and afterwards by Conveyance reciting the Infranchiſement, creates a Term to raiſe Money to pay Debts, the Reſidue to *C.* the Court Rolls are burnt, ſo it doesnot appear whether there was a Surrender to the Uſe of *A.*'s Will; but on the Circumſtances it ſhall be preſumed, and the Land go to *C.* by the Will of *A.* *Cookes* v. *Hellier*, *P.* 1749. 1 *Vezey* 234.]

So a Surrender is not neceſſary, where *A.* has only the Truſt of a Copyhold in Tail. *R.* 2 *Ver.* 585.

[A Deviſe of the Equity of Redemption of a Copyhold, to which the Mortagee is admitted, is good, tho' there is no Surrender to the Uſe of the Will. *King* v. *King*, *T.* 1735. 3 *P. W.* 358.]

[If a Man ſurrenders to the Uſe of his Will, a Will *unatteſted* ſhall direct the Uſes, notwithſtanding the Statute of Frauds, which extends not to cuſtomary Eſtates. *Tuffnel* v. *Page*, *P.* 1740. 2 *Atkyns* 37.

[Where the legal Eſtate is in Truſtees, Copyhold Lands ſhall paſs by the Will of the *ceſtuique Truſt*, without Surrender, and tho' the Will not atteſted. *Ibid.*]

[If a real Eſtate, Part Free and Part Copyhold, originally the Inheritance of the Wife, is ſettled in Truſtees for Huſband and Wife, and the Survivor, and the Heirs of their two Bodies, Remainder to the Huſband in Fee, and the Huſband by Will gives all his Meſſuages, Lands, Tenements and Hereditaments in *H.* and all other his real Eſtate to the ſame Truſtees, for a Term, and then gives all the Premiſſes unto his Wife for Life, without Waſte, the Copyhold paſſes without Surrender; for as a Surrender muſt be by the Perſon who has the legal Eſtate, where one who has not the legal Eſtate has the beneficial Intereſt, it may paſs by a Will as other Lands; and the Teſtator's Intention appears here. *Without Waſte*, is Surpluſage as to the Copyhold. *Car.* v. *Elliſon*, *P.* 1744. 3 *Atkyns* 73.]

[If a Man ſurrenders Copyhold to the Uſe of his Will, and ſigns the two firſt Sheets of his Will, conſiſting of eleven, and no more, and no Witneſſes to it, this

is

is a good Appointment to charitable Uſes, under *Stat.* 43 *Eliz.* of charitable Uſes. *Attorney-general* v. *Sawtell*, *H.* 1742. 2 *Atkyns* 497.]

So, if a Surrender is not preſented in the Time required by the Cuſtom, it ſhall be aided in Equity. 2 *Ver.* 564, 609. *Eq. Abr.* 122. *Vide Copyhold*, (P. 2.)

Tho' the Surrenderor afterwards becomes a Bankrupt, it ſhall be aided againſt the Creditors of the Bankrupt. *R.* 2 *Ver.* 565. *Eq. Abr.* 312. *Eq. R.* 14.

So it ſhall be aided againſt a Purchaſer with Notice. *R.* 2 *Ver.* 609.

So, if a Mortgage is made of Lands, Part Freehold and Part Copyhold, and the Mortgagor dies before a Surrender made; the Heir ſhall be decreed to ſurrender the Copyhold. *R. Ch. R.* 272, 331.

[If a Man has two Copyhold Eſtates, one ſurrendered to the Uſe of his Will, the other not, both ſubject to a Mortgage of 400 *l.* and by Will ſays, I give all and every my Freehold and Copyhold, (having ſurrendred the Copyhold Part thereof to the Uſe of this my Will) to *A.* and *B.* for the Benefit of a younger Child, and directs that the Copyhold Part ſhall be ſubject to the Payment of the 400 *l.* Mortgage; the unſurrendred Eſtate ſhall paſs, and the Heir at Law ſhall Surrender to the Uſes of the Will. *Banks* v. *Denſhaw*, *M.* 1747. 3 *Atkyns* 585. 1 *Vezey* 63.]

But where the Land of the Defendant is not intermixed, but lies intirely together; there ſhall not be a Commiſſion for Severance, or Diſtinguiſhment.

So, if a Copyhold is deviſed to the Eldeſt Son, being of the Nature of *Borough-Engliſh*, and Houſes in *London* to the Youngeſt Son, but there is no Surrender, and the Houſes before the Entry of the Youngeſt Son are burnt; the Defect of a Surrender ſhall not be ſupplied. *R.* 2 *Ver.* 265.

[If *A.* ſeized of Freehold, and of Copyhold Borough-Engliſh, not ſurrendered to the Uſe of his Will, by Will deſires all his Debts to be paid, makes Proviſion for his Wife and Daughter, further Proviſion for Daughter after Wife's Death, and then all the Reſidue real and perſonal, of what Nature or Kind ſoever, to his Wife, her Heirs, Executors, *&c* the Copyhold does not paſs. *Byas* v. *Byas*, *H.* 1750. 2 *Vezey* 164.]

[Defect of Surrender ſhall not be ſupplied in Favour of Grandſon, Couſin, or natural Child. *Tudor* v. *Anſon*, *T.* 1754. 2 *Vezey* 582.]

So, if a Surrender is made upon Condition to be returned, if the Surrenderor recovers; and afterwards he makes a Surrender of Part only to the ſame Uſes, and deſires to have the firſt again, which is refuſed; the firſt ſhall not be aided. *R. Eq. R.* 8.

So, if a Farm is mortgaged with all the Lands therewith occupied, and a Copyhold is occupied with the Farm, but not deſcribed in the Mortgage, nor a Covenant therein to make a Surrender: A Surrender ſhall not be decreed, if the Farm without the Copyhold is ſufficient. *R. Eq. R.* 14.

So, if a Surrender to the Uſe of a Will was intended, but not accepted, it ſhall not be aided againſt the Heir, if he did not prevent the Surrender. 1 *P. W.* 354.

If by a Marriage Settlement Land is limited to the Huſband and Wife for Life, afterwards to the firſt, ſecond and other Sons in Tail Male, and for Default of Iſſue Male, for Years to a Truſtee for the raiſing of Portions for the Daughters of that Marriage; and there is a Covenant that a Copyhold Eſtate ſhall be ſurrendred to the ſame Uſes: The Copyhold ſhall be ſubject to the Payment of the Portions, if the Freehold is not ſufficient; tho' by the Cuſtom of the Manor it cannot be ſurrendred ſo as that a Term can be limited for Default of Iſſue Male. *R.* 2 *Ver.* 321.

If by a Marriage Settlement a Copyhold is agreed to be ſurrendred to the ſame Uſes with a Freehold, and a Surrender is made to different Uſes, the Surrender ſhall be vacated, and the Copyhold ſhall be ſubject to the ſame Uſes with the Freehold. *R. Ch. R.* 254, 5.

So, if by Cuſtom of a Manor the Wife is intitled to her *Free Bench*, and a Copyhold is ſurrendred to a Truſtee, in Truſt for the Huſband in Fee, the Wife ſhall be aided in Equity for her *Free Bench*. 2 *P. W.* 644.

[If in a Manor where the Cuſtom is, that whoever purchaſes, the Lands ſhall go in Succeſſion, *A.* purchaſes for his own and two other Lives, and pays all the

Money, and by Will deviſes all his Eſtate, real and perſonal, in Poſſeſſion or Reverſion, to his Wife; ſhe ſhall have the Eſtate, tho' there was no Surrender, and tho' there was other Proviſion for her. The Court will ſupply a Surrender againſt an *hæres factus*, tho' not againſt an Heir of Blood. *Smith* v. *Baker*, *T.* 1737. 1 *Atkyns* 385.]

[If Copyholder for Life, with *Free bench* to his Widow, agrees to ſell to his Son for valuable Conſideration, which is paid, but he dies before actual Surrender; the Son is intitled to the Performance, and the Widow muſt ſurrender her Widow's Eſtate. *Hinton* v. *Hinton*, *T.* 1755. 2 *Vezey* 631, 638.

So, if a Quit-Rent is paid for twenty Years by a Copyholder to the Lord of the Manor of *B.*; it ſhall be decreed to him, tho' it appears, and is admitted, that this Copyhold was antiently held of the Manor of *C.*; for a Grant of the Freehold of this Copyhold ſhall be preſumed. *R.* 2 *Ver.* 517.

[The Court will decree Payment of a Quit-rent, tho' there was a Remedy at Law, and the Bill improper and vexatious, rather than diſmiſs it; for Plaintiff would then ſue at Law, to the farther Oppreſſion of Defendant. *Holder* v. *Chambury*, *P.* 1734. 3 *P. W.* 156.]

So *Chancery* will relieve againſt a Forfeiture by Waſte not deſigned, Neglect of Suit, *&c.* *Vide Copyhold*, (M. 3.)

Or, againſt other involuntary Forfeiture. *Vide Copyhold*, (P. 2.)

[Chancery will not relieve againſt a voluntary Forfeiture. *Semb. Peachy* v. *D. of Somerſet*, *T.* 7 *G. Str.* 447.]

[A Bill lies not for a Lord of a Manor to hold a Down diſcharged of Defendant's Claim of Common. *Holder* v. *Chambury*, *P.* 1734. 3 *P. W.* 156.]

[If Father purchaſes Copyhold Land in his Son's Name, aged eighteen, and the Father continues in Poſſeſſion till his Death; this ſhall be conſidered as an Advancement for the Son, and not a Truſt for the Father. *Taylor* v. *Taylor*, *T.* 1737. 1 *Atkyns* 386.]

[If the Son deviſe theſe Lands to the Child his Wife was enſeint with, and on its not being born alive, or dying, to his Wife, and it appears ſhe was not with Child; yet ſhe ſhall have them, and the Court will ſupply the Want of Surrender. *Ibid.*]

[A Bill lies not for a Lord of a Manor to compel Copyholders to come in and be admitted Tenants. *Clayton* v. *Cookes*, *M.* 1742. 2 *Atkyns* 449.]

(2 W.) Coſts.

When they ſhall be given, and when not.

BY the St. 17 *R.* 2. 6. the Chancellor, after Suggeſtions are found untrue, ſhall have Power to award Damages after his Diſcretion to him, who is unduly travailed.

And therefore, if a Bill is diſmiſſed upon the Hearing of the Cauſe, the Defendant ſhall have Coſts.

[If Defendant denies all Equity, and Plaintiff brings Cauſe to a Hearing on Bill and Anſwer, and the Bill is diſmiſſed, Plaintiff ſhall pay taxed Coſts. *Johnſon* v. *Brown*, *M.* 1743. 3 *Atkyns* 1.

[If there is a decree *niſi*, and Defendant makes Default, and the Decree be made abſolute, and the Court grants Rehearing on his Petition, he ſhall pay 10 *l.* Coſts. *Walter* v. *Ruſſel*, *in Sc. M.* 1718. *Bunb.* 30.]

[Plaintiff, by accepting a third Anſwer, does not waive his Coſts on the Second. *Brotherton* v. *Chancy*, in *Sc. H.* 1718. *Bunb.* 34.]

[On a third Order of Amendment, Plaintiff ſhall pay taxed Coſts, unleſs it was obtained on Terms, and by Conſent. *Anon. H.* 1740. 2 *Atkyns* 123.]

If the Diſmiſſion is, when the Hearing is upon Bill and Anſwer, the Coſts of the Defendant are aſcertained at 40 *s.*

If the Diſmiſſion is general, yet Coſts ſhall be incident.

[If a Bill brought by an Adminiſtrator is diſmiſſed on Demurrer, he ſhall pay Coſts. *Frazer* v. *Moor*, *in Sc. P.* 1720. *Bunb.* 63.]

[If Bill is amended by ſtriking out Defendant's Name, he ſhall have Coſts, tho' he appeared and anſwered without being ſerved with Proceſs. *Blackett* v. *Middleton*, *H.* 1733. *Bunb.* 335.]

So, if a Bill be for Relief againſt the Penalty of a Bond, and it is decreed upon Payment of Coſts, generally; this imports Coſts at Law, and in Equity. 3 *Ch. R.* 5.

[On an Order to tax Coſts of an Ejectment, when a new Trial is granted which Plaintiff had oppoſed, if it is granted on clear Grounds, he ſhall not be allowed Coſts for the Oppoſition, but if granted on Terms, he ſhall. *Hay* v. *Hay*, *H.* 1747. 3 *Atkyns* 634.]

So, if the Plaintiff hath Relief from a tortious Procedure in an inferior Court; he ſhall have his Coſts there, and here. *Ch. R.* 473.

[Where Plaintiff ſucceeds in his Demand he ſhall have Coſts, unleſs Circumſtances ariſe which are an Excuſe for Defendant. *Roberts* v. *Kuffin*, *M.* 1740. 2 *Atkyns* 112.

If a Woman Plaintiff marries, whereby the Suit abates, and the Huſband and Wife revive; ſhe ſhall have Coſts of the whole Suit, except of the Bill of Revivor. 1 *Ver.* 318.

So every Truſtee ſhall have his Coſts.

And if his Coſts are not taxed at the Whole of his Expence, they ſhall be allowed out of the Truſt, upon his Account. *R.* 2 *Ca. Ch.* 138.

[If a Truſtee Defendant miſbehaves, the Court will make him pay Coſts, tho' Coſts out of the Eſtate would be the ſame Benefit to Plaintiff. *Lloyd* v. *Spillet*, *M.* 1734. 3 *P. W.* 344.]

[If a Truſtee, merely to have a Point relating to his private Intereſt determined, brings the *Ceſtuique Truſt* before the Court, he ſhall pay the whole Coſts. *Henley* v. *Philips*, *T.* 1740. 2 *Atkyns* 48.]

So, if a Bill is brought by an Heir, to avoid the Deviſe of his Father, againſt a Deviſee, and he does not prevail, but is left to Law; he ſhall pay Coſts. 1 P. *W.* 558.

[On a Bill brought againſt the Executor and the Heir at Law, for Account of real and perſonal Aſſets, the Heir at Law is intitled to Coſts, for the Law throws the Deſcent on him; the Executor is not, for he may renounce. *Humphrey* v. *Morſe*, *T.* 1742. 2 *Atkyns* 408.]

[If Heir at Law brings Bill to ſet aſide Will for Inſanity in Teſtator, inſtead of Ejectment, he ſhall pay Coſts if he fails. *Webb* v. *Claverdon*, *M.* 1742. 2 *Atkyns* 424.]

[But if the Heir is Defendant, tho' he inſiſts on Fraud or Inſanity, and Iſſue is directed, he ſhall not pay Coſts, and often ſhall be allowed them, tho' he fails. *Ibid.*]

[If Heir at Law only croſs-examines Witneſſes, produced to confirm a Will on a Bill *in perpetuam rei Memoriam*, he ſhall have Coſts; but if he examines other Witneſſes to encounter the Will, he ſhall not; this is only when no Relief is prayed, and the Cauſe does not come to a Hearing. *Berney* v. *Eyre*, *T.* 1746. 3 *Atkyns* 387.]

[But where at the Hearing an Iſſue at Law is directed, tho' the Will is eſtabliſhed, he ſhall have Coſts. *Ibid.*]

[But if he ſets up Inſanity, or other Diſability in Teſtator, and fails, he ſhall not have Coſts. *Ibid.*]

[The Court will not decree him to pay Coſts, but on a very ſtrong Caſe, as *ſpoliation*, or ſecreting the Will. *Ibid.*]

[If one Witneſs ſwear an Heir attempted to conceal a Will, which he by his Anſwer denies, the Court will give him Coſts. *Ibid.*]

[But if after the Heir is informed there is a Will in *A.*'s Hands, he takes out Adminiſtration on the uſual Oath, without inquiring after *A.* the Court will not give him Coſts. *Ibid.*]

So,

So, if a Legatee or Creditor, not a Party to the Suit, comes to prove a Debt or Legacy before a Maſter, he ſhall have Coſts; for it is for the Eaſe of the Eſtate. 2 *P. W.* 27.

[When Coſts are decreed out of an Eſtate to be ſold for Benefit of Creditors, Plaintiff and Defendant are intitled to them before the Creditors are intitled to their Demands. *Hare* v. *Roſe*, *T.* 1754. 2 *Vezey* 558.]

[Mortgagor ſhall pay Coſts, tho' he has offered to pay what ſhall appear due, on Balance of the Mortgage on one Hand, and an open Account on the other, unleſs Mortgagee has been vexatious. *Garforth* v. *Bradley*, *T.* 1755. 2 *Vezey* 675.]

So, where a Solicitor carried on a Cauſe in the Name of the Plaintiff, he was charged with the Coſts. *Ca. Ch.* 71.

So, if a Cauſe miſcarries, by the groſs Neglect of the Attorney, or his Solicitor. 1 *P. W.* 593.

[If an Attorney draws Deeds under fraudulent Circumſtances, he ſhall pay Coſts on their being ſet aſide, tho' he pretends he only followed Directions. *Bennet* v. *Vade*, *T.* 1742. 2 *Atkyns* 324.]

[If a Solicitor in a Cauſe takes Affidavits before himſelf, a Petition founded thereon ſhall be diſmiſſed, and he ſhall pay the Coſts. *Ex parte Hogan*, *T.* 1754. 3 *Atkyns* 813.]

[If there are two Defendants to a Bill for Tithes, and they anſwer and examine ſeparately, and one makes Default, the other ſhall pay the whole Coſts. *Lloyd* v. *Mackworth*, *M.* 1723. *Bunb.* 138. *Sed. Q.*]

[On an Anſwer reported ſcandalous, Coſts (as Fees not paid) are allowed by way of Damages, and Satisfaction for the Scandal. *Chambers* v. *Robinſon*, *P.* 1724. *Bunb.* 164.]

[If Defendant to a Croſs-bill, by a ſecond Anſwer confeſſes a Matter, tho' he had charged the contrary in his original Bill, and did not diſcloſe it in his firſt Anſwer, he ſhall be puniſhed with Coſts. *Mallabar* v. *Mallabar*, *P.* 8 *G.* 2. *C. T. T.* 78.]

[If a Bill is brought to ſecure a contingent Intereſt deviſed over, the Coſts ſhall be paid out of Teſtator's Aſſets, who by his Will has occaſioned the Difficulties. *Studholme* v. *Hodgſon*, *T.* 1734. 3 *P. W.* 300.]

[Heir at Law Defendant ſhall have Coſts, tho' he inſiſts on his Title, and it goes againſt him. Heir at Law Plaintiff miſcarrying ſhall not have Coſts; if his Suit appears groundleſs, ſhall pay Coſts. *Luxton* v. *Stephens*, *T.* 1735. 3 *P. W.* 373.]

[In notorious Frauds, anciently the Court decreed *exemplary* Coſts, but it is now diſuſed. *Waltham* v. *Broughton*, *T.* 1740. 2 *Atkyns* 43.]

[A Party's having refuſed a fair Offer of Accommodation, is a Reaſon for giving Coſts. *Biggleſton* v. *Grubb*, *T.* 1740. 2 *Atkyns* 48.]

[If Plaintiff does not reply, Defendant has Coſts only according to the Courſe of the Court; but if Plaintiff deſires Defendant to do an Act, (as to admit to a Copyhold) he ſhall have Coſts taxed. *Sutton* v. *Stone*, *M.* 1740. 2 *Atkyns* 101.]

[If the Exceptant to an Award of Commiſſioners of charitable Uſes is vexatious, this Court can (and will) give Coſts to be taxed againſt him, tho' the Commiſſioners cannot. *Aylet* v. *Dodd*, *H.* 1741. 2 *Atkyns* 238.]

[The Court will give Coſts on Exceptions to a Decree of charitable Uſes, to the Exceptants where they prevail, to the Reſpondents where they do not. *Burford* v. *Lenthall*, *P.* 1743. 2 *Atkyns* 551.]

[If an Information is brought colourably for a Charity, but contrary to the real Charity, the Relators ſhall pay the Coſts. *Attorney-general* v. *Smart*, *H.* 1747. 1 *Vezey* 72. *Attorney-general* v. *Middleton*, *T.* 1751. 2 *Vezey* 327.]

But the Court has Power, upon the Circumſtances of the Caſe, to abate or diſcharge Damages and Coſts. *Ca. Ch.* 106.

And therefore, where a Borrower paid Money, to a Scrivener intruſted to make a Loan of the Money, without taking up the Security; tho' the Payment was not allowed, yet he was not charged with Intereſt or Coſts. *Ca. Ch.* 94, 111.

If

If a Loan is made to an Heir, &c. upon an Agreement to pay 1000 *l.* for every 100 *l.* if his Uncle dies, without Iſſue, in his Life-time; there ſhall be a Decree with Intereſt, but without Coſts. 2 *Ver.* 122.

If a Bill of Revivor is diſmiſſed with Coſts, no Coſts of the firſt Bill ſhall be given. 3 *Ch. R.* 65.

If a Proteſtant next of Kin has a Decree for the Profits of Lands belonging to Papiſts, he ſhall not have Coſts, for a Caſe ſo hard. *Eq. Ca.* 146, 7. *

If a Bill is brought for an Account againſt a Truſtee, who anſwers readily and honeſtly; he ſhall pay Intereſt for the Sum due from the Time of the Liquidation of the Account, but not Coſts; otherwiſe, if he controverts the Account. *Pr. Cha.* 254. *Vide Eq. Abr.* 125.

* 2d Part of 2 *Mod. Ca.*

[If on Bill for Tithes the Defendant hath made Tender, before and by the anſwer, he ſaves his Coſts; if by the Anſwer only, he muſt account, with Coſts. *Anon. in Sc. M.* 1718. *Bunb.* 28.]

[On a Bill for Tithes, Defendant was admitted on Motion, after Anſwer, to pay Money in Lieu of Tithes, and Coſts to that Time, and Plaintiff to proceed at peril of Coſts. But it was by Conſent. *Biſhop of Exeter* v. *Trenchard, in Sc. T.* 1719. *Bunb.* 47.]

[On a Bill for thirteen Sorts of Tithe, Plaintiff did not abridge by his Replication, and proved but one Sort due, yet had Coſts generally. *N. B.* This was on Debate. *Smith* v. *Morgan, H.* 1733. *Bunb.* 335. But the Practice in the Exchequer now is to tax Coſts on both Sides.]

If a Defendant claims 800 *l.* to be due, and there is only 130 *l.* due upon Account, tho' he has a Decree, he ſhall not have Coſts. 1 *P. W.* 377.

So, where the Plaintiff has probable Cauſe, tho' the Bill was diſmiſſed, he ſhall not pay Coſts. 2 *Ca. Ch.* 10.

So, if a Bill of Revivor is brought againſt the Heir and Executor, Coſts ſhall be given only for the Proceedings upon the Bill of Revivor. 1 *Ver.* 318.

[If Plaintiff revive againſt an Executor for the Duty as well as the Coſts, Defendant ſhall pay Coſts; but if Plaintiff revive only for the Coſts not ſettled in Teſtator's Life, Defendant ſhall not pay Coſts. *Delaval* v. *Blackett, in Sc. T.* 1719. *Bunb.* 45.]

If a Defendant does not demur, where he might have an Advantage upon a Demurrer, he ſhall not have Coſts. 1 *Ver.* 283.

[If on allowing Demurrer Defendant levies the 5 *l.* Coſts, and the Order is afterwards reverſed, the Coſts ſhall be returned to Plaintiff. *Oates* v. *Chapman, T.* 1750. 1 *Vezey* 542. 2 *Vezey* 100.]

If a Bill in the Nature of an *Interpleader* is exhibited; the Plaintiff uſually has Coſts of the Defendant, who is in Fault. *Ch. R.* 257, 8.

If a Bill for Foreclоſure is diſmiſſed, where the Mortgagewas by Huſband and Wife without a Fine, it ſhall be without Coſts. 2 *P. W.* 128.

[Tho' Bill brought by Huſband, for Relief againſt a Security given by his Wife juſt before Marriage, and concealed from him, be diſmiſſed, yet Coſts ſhall be excuſed, unleſs the Concealment was at Wife's Requeſt. *Blanchet* v. *Foſter, P.* 1751. 2 *Vezey* 264.]

So the Court does not uſually give Damages or Coſts in Caſes, where none are given at Law; as upon a Bill of Review; for if a Judgment at Law is reverſed by Error, Reſtitution only is granted. 1 *Ch. R.* 231. 3 *Ch. R.* 15.

[If there has been no Demand of Rent for thirty Years, the Defendant ſhall not pay Coſts in Equity, tho' he muſt at Law. *Anon. M.* 1737. 2 *Atkyns* 14.]

So, an Executor, Truſtee, &c. does not uſually pay Coſts but out of the Truſt. *Semb. Ch. R.* 30.

If *A.* be aided againſt an Executor upon a Bond to indemnify, the Executor ſhall not pay Coſts; for he ſhall not have Allowance of them upon *Plene adminiſtravit*. *R. Hard.* 165.

If *A.* files a Bill againſt Executors for a Bond to be cancelled, being ſatisfied; and it appears ſatisfied within the Act of Oblivion; the Executors do not pay Coſts; for their Plea was in Diſcharge, and *tantamount* to a Demand by them, as Plaintiffs at Law. *R. Hard.* 378.

[The Executor of an Executor ſhall be excuſed Coſts, if the Eſtates of the two Teſtators were ſo blended that he could not tell whether there were Aſſets, tho' it afterwards appears that there were. *Sandys* v. *Watſon*, *M.* 1740. 2 *Atkyns* 80.]

[Executors and Adminiſtrators, tho' they do not pay Coſts on Bill brought for an Account of Aſſets, yet are not allowed them, for they are ſuppoſed to take Credit on the Account for them. *Humphreys* v. *Moore*, *M.* 1740. 2 *Atkyns* 108.]

[An Executor guilty of a Fraud ſhall pay Coſts, tho' the Teſtator has directed they ſhall be allowed Coſts out of the Eſtate. *Hide* v. *Haywood*, *H.* 1740. 2 *Atkyns* 126.]

[An Adminiſtrator ſhall not be allowed Coſts at all Events. *Wilkins* v. *Hunt*, *H.* 1740. 2 *Atkyns* 151.]

A Releaſe of Coſts by the Plaintiff to one of the Defendants is a Diſcharge to all; except where the Defendant to whom the Releaſe is made, never was ſerved *ad aud. Judicium*, but was inſerted by Miſtake. *R. Hard.* 183.

Yet the Award of Coſts for or againſt the Plaintiff or the Defendant ſhall never be Cauſe for an Appeal, where the Merits of the Cauſe are againſt the Appellant. *Ca. Parl.* 16.

[If Coſts affect the Merits of the Caſe, as if Juſtice is on Defendant's Side who is a fair Incumbrancer, and he is not allowed them by Maſter of the Rolls, he may appeal for them only. *Owen* v. *Griffith*, *T.* 1749. 1 *Vezey* 250.]

[Coſts ſhall not be paid for not moving according to Notice. *Tarrant* v. *Trewit*, *in Sc.* *M.* 1721. *Bunb.* 86.]

[But if four Notices have been given, they ſhall not move on the Fourth without paying Coſts for the three firſt. *D.* *Ibid.*]

[If Coſts are reſerved by the firſt Decree, and no Notice taken of them when the Report is confirmed, and on Appeal to the Lords they order the Deputy to vary the Account in an Article, and confirm the Decree, and all other Matters in it, the Court will not give Coſts. *Croſley* v. *Shadforth*, *H.* 1727. *Bunb.* 245.]

[If Infant Plaintiff, or his *Prochein amy*, dies after the Bill diſmiſſed, and before Coſts taxed, they are loſt. *Morgan* v. *Crompton*, *M.* 1733. *Bunb.* 332.]

[If *Prochein amy* carries on Suit for an Infant, *with Approbation of the Court*, and the Bill is diſmiſſed with Coſts, he ſhall be allowed the Coſts out of the Infant's Eſtate. *Taner* v. *Ive*, *T.* 1752. 2 *Vezey* 466.]

[The Court will poſtpone the Conſideration of Coſts till after the Report, to accellerate a Decree, even where there is Ground to decree Coſts at the Hearing. *Scarborough* v. *Barton*, *M.* 1740. 2 *Atkyns* 111.]

[Where Defendant gives unneceſſary Trouble in carrying a Decree into Execution, Plaintiff may apply for Coſts. *Ibid.*]

[The Repreſentative of one who has obtained an Order to tax a Bill, on undertaking to pay, cannot revive it but on like Undertaking. *Murphey* v. *Balderſton*, *M.* 1740. 2 *Atkyns* 114.]

[To bring a Defendant into Contempt on an Order of Taxation, you muſt leave at his Houſe a Copy of the Execution of the Order, and the Report of the Sum. *Ibid.*]

[If Plaintiff's Bill be diſmiſſed with Coſts, (as praying only Diſcovery) and he recovers Judgment at Law againſt Defendant, who lies in Cuſtody and takes out Attachment againſt Plaintiff for the Coſts here, the Court will let him ſet off the Coſts at Law againſt them. *Semb. Guriſh* v. *Donovan*, *P.* 1741. 2 *Atkyns* 166.]

[The Court, on Motion, will lay their Hands on Coſts taxed here for one of the Parties, towards ſatisfying a Debt due from him to the other on a Judgment at Law. *Sheregold* v. *Brewſter*, *in Sc.* *M.* 1718. *Bunb.* 29.]

[If Plaintiff brings Bill to perpetuate Teſtimony, and has examined and had the Fruit of the Bill, neither Plaintiff nor Defenndant ſhall have Coſts. *Codrington* v. *England*, *P.* 1741. 2 *Atkyns* 167.]

[But if Plaintiff is forced into Court by a Multiplicity of Actions, on a Cuſtom which might have been tried by one, and the Cuſtom is found for the Plaintiff, he ſhall have Coſts. *Ibid.*]

[On a Petition ſuggeſting the Poverty of Plaintiff, the Court will order the Coſts decreed, to be taxed and paid immediately, to enable Plaintiff to go on with the Cauſe. *Jones* v. *Coxetor*, *T.* 1742, 2 *Atkyns* 400.]

[If

[If a Witneſs demurs, and it is over-ruled, there cannot be a *Subpæna* for Coſts, but the Court will give them by Order. *Vaillant* v. *Dodemede*, *P.* 1743. 2 *Atkyns* 592.]

[The Court may give Coſts on particular Circumſtances, tho' the Maſter has reported for the other Party. *Anon. T.* 1744. 3 *Atkyns* 235.]

[If the Maſter reports Proceedings under a Commiſſion for Examination irregular, and the Court, thinking them regular, allows the Exception; or if the Maſter reports an Anſwer inſufficient, and the Court, thinking it ſufficient, allows the Exception, yet the Party ſucceeding ſhall not have Coſts, for the Proceeding does not appear vexatious. *Ibid.*]

[If Plaintiff obtains an Order to amend on a Suggeſtion that the Cauſe is at Iſſue *only*, whereas it is alſo in the Paper, it ſhall be diſcharged with 20*s*. Coſts. *Harding* v. *Cox*, *M.* 1747. 3 *Atkyns* 583.]

[On paying the Coſts of the Day, a Cauſe in the Paper may be put off till next Term that Plaintiff may amend. *Ibid.*]

[If Coſts are decreed to all Parties out of a real Eſtate, and one dies before they are taxed, they ſhall be taxed and paid to the Heir at Law. *Blower* v. *Morrets*, *P.* 1754. 3 *Atkyns* 772.]

[If an Executor is decreed to pay Coſts out of Aſſets, and Plaintiff dies, the Bill may be revived for *Coſts only*; for the Decree is not *in Perſonam*. *Ibid.*]

[So if the Executor dies, Plaintiff may revive againſt the Repreſentative of Teſtator, and purſue the Aſſets. *Ibid.*]

[If Defendant is allowed his Coſts on the original Bill, and his Croſs-bill is diſmiſſed with Coſts, and Plaintiff dies before Taxation, Defendant may revive. *Kemp* v. *Mackrell*, *T.* 1754. 3 *Atkyns* 812. 2 *Vezey* 579.]

[If Plaintiff is beyond Sea, Defendant may apply for Security to anſwer Coſts; if it appears on the Bill, or Defendant knew it, it muſt be before Anſwer, or praying Time to anſwer; otherwiſe at any Time in the Courſe of the Cauſe. *Meliorucchy* v. *Meliorucchy*, *T.* 1750. 2 *Vezey* 24.]

[Where Plaintiff living abroad applies for a Commiſſion to examine, which is likely to prove expenſive, the Court will require Security for extraordinary Coſts. *Gage* v. *Lady Stafford*, *T.* 1754. 2 *Vezey* 556.]

[If Bill is diſmiſſed with Coſts, and they are taxed, and Plaintiff in Cuſtody for Contempt in Non-payment, and Defendant dies, if his Repreſentatives do not revive in a reaſonable Time, Plaintiff ſhall be diſcharged. *White* v. *Haywood*, *T.* 1752. 2 *Vezey* 461.]

[If Coſts are decreed out of Aſſets, and before they are taxed Suit abates by Plaintiff's Marriage, it may be revived; for it is an executory Decree, and if Aſſets are not admitted an Account muſt be taken. *Johnſon* v. *Peek*, *T.* 1752. 2 *Vezey* 465.]

(2 X.) Covenant.

(2 X. 1.) When it ſhall be performed.

CHANCERY will inforce a ſpecific Performance of a Covenant; as if a Man covenants to make further Aſſurance. *Ca. Ch.* 252. *Vide Ante*, (2 C. 1.) *Poſt*, (3 Z. 1.)

So, if a Man aſſigns Shares in the Exciſe to *B.* who covenants to indemnify; the Court will inforce the Performance. *Eq. Abr.* 17.

So, if there is a Covenant for further Aſſurance, and the Vendor, who at the Time of the Covenant had a defective Title, afterwards purchaſes a good Title; he ſhall be decreed to convey. *Ca. Ch.* 274.

So, if *A. B.* and *C.* are Partners, and upon the Diſſolution of the Partnerſhip, *A.* takes his Share, and *B.* covenants to indemnify him againſt all Damages in reſpect of the Trade, and afterwards this Covenant is broken; *A.* having Money of *B.* in his Hands, ſhall be enabled by the Court to retain it. *Ca. Ch.* 311, 312.

If

If *A.* upon his Marriage with *B.* covenants to ſettle his Eſtate to their Uſe, and afterwards upon the Iſſue of the Marriage, and afterwards to the Heirs of *A.* and *B.* covenants in like Manner: The Heir of *A.* by a former *Venter* ſhall compel the Heir of *B.* to make ſuch Settlement. *R. Eq. Ca.* 108.*

* 2d Part of 2 *Mod. Ca.*

If *A.* covenants, upon the Marriage of his Daughter to *B.* to ſettle a third Part of all the Eſtate which he ſhall have from his Father; he ſhall be compelled to do it. *R.* 2 *P. W.* 192.

So, if Father and Son covenant to make a Conveyance, and the Son is under Age; the Father ſhall be decreed to procure his Son to convey. *R.* 2 *Ca. Ch.* 53.

If *A.* covenants to ſettle 100 *l. per Ann.* for a Jointure, and afterwards purchaſes Land of that Value, he ſhall be decreed to ſettle that Land. 2 *Ver.* 97.

Tho' he deviſes the Land afterwards, without making the Settlement, and had no other Land of that Value. *R.* 2 *Ver.* 97.

If *A.* covenants to transfer ſo much Stock in the *Eaſt-India Company* on or before ſuch a Day; tho' the Value riſes before the Day, he ſhall be obliged to transfer and account for all Dividends, and pay all Coſts in Law and Equity. 2 *Ver.* 394.

If *A.* covenants, in Conſideration of Affection, and to make a Reconciliation between his Nephew and his Father, to make a Settlement of his Eſtate upon his Nephew, he ſhall be compelled to do it. *Eq. Abr.* 16. 2 *P. W.* 467.

[If *A.* Tenant in Fee, in Conſideration, *&c.* demiſes to *B.* a Meſſuage, *&c.* for three Lives, under Rent of, *&c.* and *B.* covenants with *A.* that on the Death of any of the three Lives he ſhall pay *A.* Fine of, *&c.* for every Life added or renewed, from Time to Time, according to the true Intent, *&c.*; and *A.* covenants with *B.* that he *ſhall and will,* (in Conſideration of the Fine to be paid at *A. Hall,* or the Place where it now ſtands,) *execute one or more Leaſe or Leaſes,* under the ſame Rents and Covenants as the preſent, and ſo to continue the Renewing ſuch Leaſe or Leaſes to *B.* paying as aforeſaid the Fine to *A.* for every Life ſo renewed, from Time to Time, according to the true Intent. *B.* is intitled to renew, with Covenant of Renewal inſerted in every Renewal, *i. e.* to renew at the ſame Fine for ever. *Furnival* v. *Crew, P.* 1744. 3 *Atkyns* 83.]

(2 X. 2.) When not.

But a Covenant to make a collateral Security of other Land ſhall not be decreed. *R. Ca. Ch.* 252.

A Covenant for other Aſſurance ſhall not be decreed *in Specie,* where the Agreement was with the Son during the Life of his Father. 1 *Ver.* 271.

A Covenant ſhall not be decreed, where there hath been an Enjoyment againſt it for ſixty Years. *R.* 2 *Ver.* 127.

So it ſhall not be decreed, where the Covenant is not certain, or there is not a mutual Remedy. 2 *Ver.* 416.

So a voluntary Covenant ſhall not be extended, or decreed beyond the Letter of it. 2 *Ver.* 693.

So a Covenant to make a Leaſe, which would be a Breach of Truſt, ſhall not be decreed. *R.* 2 *Ver.* 411.

So, if a Term is aſſigned by way of Mortgage, the Aſſignee not being in Poſſeſſion ſhall not be decreed to a Specific Performance of the Covenants, tho' liable at Law. *R.* 2 *Ver.* 275.

(2 X. 3.) When it ſhall be avoided.

(2 X. 3.) If there was a Miſtake.

If a Covenant is inſerted contrary to the Agreement of the Parties, the Covenantor ſhall be relieved.

As, where a Man ſells Church Land in the Time of Rebellion, and covenants, that he is ſeiſed, where he intended to covenant only againſt his own Act. *R. after a Verdict againſt the Covenantor. Ca. Ch.* 15. *Ch. R.* 90.

Tho' his Counſel had aſſented to the Covenant, that he was ſeiſed, omitting *(lawfully),* which is of no Effect. *Ca. Ch.* 16.

So, if a Term is created for a ſpecial Purpoſe, and veſted in Truſtees for the ſole Diſpoſition of the Wife, and a Covenant is given by the Huſband, that it ſhall be at her Diſpoſal, this Covenant ſhall be avoided, tho' there is Proof by only a ſingle Witneſs, that the Term and Covenant were not generally intended to be in the Power of the Wife, but for a particular Purpoſe, which was ſatisfied. *R.* 2 *Ca. Ch.* 180. (2 X. 4.) If it was intended for a ſpecial Purpoſe.

If there is a Covenant for quiet Enjoyment, where the Eſtate was purchaſed at an Under-value, and the Title proves defective, the Covenantor ſhall be relieved in Equity, upon Payment of the Principal and Intereſt. *R.* 1 *Ver.* 320.

So, if *A.* covenants upon the Marriage of his Son to ſettle 200 *l. per Ann.* for a Jointure on his Wife, and afterwards to the firſt, ſecond and other Sons, *&c.* If he leaves 200 *l. per. Ann.* to deſcend to the Son, it is ſufficient; and he ſhall not be bound to purchaſe 200 *l. per Ann.* to be ſettled, but the whole Perſonal Eſtate ſhall go according to the Stat. of Diſtribution. *R.* 2 *Ver.* 558. *Vide Poſt*, (3 D. 1. 3 Y. 8, *&c.*) (2 X. 5.) If it was ſatisfied by a Collateral Matter.

(2 X. 6.) When there is a Remedy upon a Covenant, in Equity.

[If a Man covenants to make an Eſtate in Land, a Suit in Equity is *moſt* proper, for this Court can give the Thing itſelf; Law, only Damages. *Furnival* v. *Crew*, *P.* 1744. 3 *Atkyns* 83.]

[If a Covenant binds Lands in Equity, it gives the Relief here againſt the proper Perſon who is in Poſſeſſion of the Land. *Ibid.*]

So, if a Man covenants for himſelf, his Executors and Aſſigns, and afterwards aſſigns to a Perſon inſolvent; the Leſſee ſhall be compelled, in Equity, to pay the Rent. *Vide* 1 *Ver.* 88, 165.

But if the Leſſee covenants to repair, and afterwards leaſes to Truſtees for his Wife for ten Years; the Leſſor ſhall not compel the Wife to repair, in Equity, if the Huſband left Aſſets. 1 *Ver.* 87, 8.

If *A.* by Marriage Articles agree to lay out 1000 *l.* in a Purchaſe to be ſettled upon Himſelf and his Wife for Life, and afterwards to their Iſſue, and then to the Huſband in Fee; and he purchaſes a great Houſe and Garden for 1000 *l.* which was conveyed to him in Fee, and afterwards ſettled to the Uſes of the Articles, with the Aſſent of the Father of the Wife; *Chancery* will not inforce any other Performance of the Covenant. *R.* 1 *Ver.* 346.

Equity will not relieve againſt a Verdict for a Breach of Covenant, becauſe the Damages are exceſſive. 1 *Ver.* 316.

Or, after a Trial and Damages given for Breach of Covenant. 2 *Ca. Ch.* 97, 8.

(2 Y) Cuſtom.

WHERE a Man has a Right by Cuſtom, or Preſcription, for which his Remedy at Law is defective; *Chancery* will give Relief.

As, if *A.* alledges a Right to a *Tin-ſet*, and that by Cuſtom the Defendant ought to divide his Tin into eight Parts, of which the Plaintiff by Lot is to have one, but that the Defendant to defraud the Plaintiff ſet out only one ſmall Heap, and put all the Reſt into another Heap; the Plaintiff ſhall have an Account for his Cuſtomary Part. *R.* 2 *Ver.* 483.

So, if by Preſcription, the King ought to have all the Inhabitants of ſuch a Vill to grind at his Mill; the Court of Equity in the *Exchequer* will compel them ſo to do. *Hard.* 21.

So, if the Mill of an Abby, at which all the Inhabitants of the Vill ought to grind, comes to the King by Diſſolution, tho' it was not originally the Mill of the King, or within his Manor. *R. Hard.* 21.

So, if there is a long Enjoyment of a Watercourſe, it ſhall be decreed; for that is Evidence of a Right. 2 *Ver.* 396.

So, *Chancery*, upon a Bill, will direct a Trial at Law of a Cuſtom or Preſcription, to avoid Multiplicity of Suits. 1 *Ver.* 22, 266.

[An Iſſue may be directed to try whether ſuch Cuſtom as laid in Bill, or any, and what Cuſtom, tho' Plaintiff does not prove the Cuſtom laid. *E. of Scarbrough* v. *Hunter*, *in Sc. P.* 1719. *Bunb.* 43.]

(2 Z) Debt.

What makes a Man a Debtor in Equity.

IF a Man lends Money to *A.* upon the Security of a Ship, which is loſt in the Voyage, *A.* ſhall be Debtor for the Money, tho' there be, or be not a Covenant for the Payment. *R. Eq. Abr.* 139.

(3 A) Deviſe.

(3 A. 1.) When it ſhall be decreed, tho' void by Law.

Vide Legacy, Poſt. (3 Y. 3.)

CHANCERY will inforce the Performance of a Will. *Vide Poſt*, (3 G. 2.—3 Y. 3.)

How a Will ſhall be executed, and conſtrued at Law, *Vide in Deviſe*, (D. 1, *&c.*—N. 1, *&c.*)

A Deviſe of the Equity of Redemption of Lands by the Mortgagor, after the Mortgage forfeited, ought to purſue the Circumſtances required by the *St.* 29 *Car.* 2. 3. *Semb.* 2 *Ca. Ch.* 8.

And if *A.* purchaſes the Inheritance and takes an Aſſignment of a Term to attend upon it, and afterwards makes a Deviſe; if the Will is not ſufficient to carry the Inheritance, for want of the Circumſtances required by that Stat. the Term does not paſs. *R.* 2 *Ca. Ch.* 49, 55.

If *A.* deviſes entailed Lands to his Daughter, and other Lands in Lieu thereof to the Iſſue in Tail, who gives a Bond that the Daughter ſhall enjoy; the Daughter ſhall be aided againſt his Iſſue, in Equity. *R.* 2 *Ver.* 233.

So, if there was no Engagement that the Daughter ſhould enjoy. *Eq. R.* 15.

If a Man deviſes to *A.* for Life, and then to his 1ſt, 2d, 3d and other Sons in Tail, and afterwards to *B.* and *C.* to preſerve the ſame Remainders, *Chancery* will inforce a Conſtruction of the Deviſe to the Truſtees to be precedent to the 1ſt, 2d and other Sons. *R. upon a Plea to a Bill brought by one who claimed under a Recovery ſuffered by A.* *R.* 2 *Ca. Ch.* 10.

If a Man articles for the Purchaſe of Land, and then deviſes all his Land for the Payment of Debts, and afterwards the Land is conveyed to him; the Land ſhall be decreed for the Payment of Debts, tho' the Purchaſe was not compleat at the Time of making the Will, and there was no Republication. *R.* 2 *Ca. Ch.* 144.

So, tho' no Article was executed for the Purchaſe, precedent to the Will. *Per Lord Chan.* 2 *Ca. Ch.* 144. *Eq. Abr.* 174.

If *A.* deviſes, by Miſtake, Land which was entailed, and permits his Land in Fee to deſcend; the Deviſee ſhall be aided. *R.* 2 *Ver.* 233.

If a Man writes a Paper and keeps it with his Will; tho' it does not amount to a Codicil, it may be allowed to explain the Intent of the Teſtator in his Will. 1 *Ch. R.* 268.

If a Will is torn or cancelled by a Stranger, the Heir ſhall be decreed to convey purſuant to the Deviſe, if by Pieces collected, *&c.* it can be known; tho' it does not appear to be cancelled with the Privity of the Heir. *R.* 2 *Ver.* 441.

If a Man deviſes Land to *A.* and afterwards his Son, to defeat the Deviſe, diſſeiſes his Father, who dies before a Re-entry; *Chancery* will decree the Deviſe, tho' void by Law. *Eq. Abr.* 174. 1 *Rol.* 371. *l.* 41.

So, if a Man deviſes his Copyhold, agreed to be purchaſed, and dies before Admittance. *Eq. Abr.* 174.

So, if a Man by Circumvention is induced to make his Will; it ſhall be avoided in his Life-time, tho' he was of ſane Memory. 1 *Ch. R.* 23.

So, if a Legacy is limitted to *A.* by Fraud; he ſhall be a Truſtee for ſome other. *Eq. Ca.* 208.

So, if *A.* by his Will gives all his Lands to his Wife in Fee, to the Diſinheriſon of all of his Name and Blood, where it appears by Circumſtances that he intended to his Wife only an Eſtate for Life: the Will ſhall be avoided in Equity. 1 *Ch. R.* 124.

So, if *A.* gives 2000 *l.* to *B.* to make him the Deviſee of his Eſtate, which is done, and the Notes given for the 2000 *l.* are counterfeit; Equity will relieve. 2 *Ver.* 700. 1 *P. W.* 288.

If *A.* promiſes a Teſtator, that he will pay an Annuity to *B.* otherwiſe the Teſtator would have charged it upon his Real Eſtate, and then the Teſtator by his Will gives the Annuity to *B.* and makes *A.* his Executor; *A.* ſhall be decreed to pay the Annuity, tho' the Perſonal Aſſets will not extend to pay it. *R.* 2 *Ver.* 506. *Eq. Abr.* 231.

If *A.* impoſes upon a Teſtator, to deviſe the Fee to him, where it was intended to another, Equity will relieve. 2 *Ver.* 700. 1 *P. W.* 288.

So, if a Will of Perſonal Eſtate be gained by Fraud, Equity will examine the Fraud. 2 *P. W.* 287.

[If a Bill is brought to prove a Will of Land, the Sanity of Teſtator muſt be proved, but not in caſe of a Deed of Truſt to ſell for Payment of Debts. *Harris* v. *Ingledew*, *H.* 1730. 3 *P. W.* 91.]

[To eſtabliſh a Will as to real Eſtate, it is not ſufficient to prove it executed according to the Statute of Frauds, the Teſtator muſt be proved of ſound and diſpoſing Mind. *Wallis* v. *Hodgiſon*, *M.* 1740. 2 *Atkyns* 56.]

[To prove a Will of Land, all the Witneſſes ſhould be examined, or ſome Account given why they are not. *Ogle* v. *Cook*, *M.* 1748. 1 *Vezey* 177. *Townſend* v. *Ives*, *P.* 21 *G.* 2. 1 *Wilſ.* 216.]

[If one Witneſs is abroad, there muſt be a Commiſſion to examine him; for the ſame Credit is not given to his Hand if abroad as if dead. *Grayſon* v. *Atkinſon*, *T.* 1752. 2 *Vezey* 454.]

[Chancery will not eſtabliſh a Will, not proved, nor admitted by the Heir at Law, tho' he ſays he *believes* it, and there is no Replication, but will let the Cauſe ſtand over, with Liberty to reply. *Potter* v. *Potter*, *T.* 1749. 1 *Vezey* 274.]

[If a Man deviſes to his Son *A.* he ſhall take, tho' illegitimate, if he has acquired the Name of Son by Reputation. *Rivers's Caſe*, *M.* 1737. 1 *Atkyns* 410.]

(3 A. 2.) When Chancery does not relieve; and, When a Deviſe may be explained by Witneſſes.

But *Chancery* does not ſupply the Defects in the Execution of a Will. *Eq. R.* 170.

[If the Owner of the Fee has alſo a Term, and deviſes the Lands, but does not execute his Will before three Witneſſes; Equity will not conſtrue it a Deviſe of the Term. *Whitchurch* v. *Whitchurch*, *H.* 11 *G. Str.* 619.]

Nor relieve againſt the ſurreptitious Obtaining of a Will, if it was duly executed. *R.* 3 *Ca. Ch.* 61, 94, 103. *Vide Ante* (2 T. 12.)

Nor, againſt the Ignorance, or Negligence of the Counſel, who makes a Will for another. *R.* 3 *Ca. Ch.* 120. *R. Eq. R.* 12.

[A Fee mounted on a Fee is void in Law; and where it is a Deviſe of a legal Eſtate, Equity cannot relieve; therefore, Deviſe of Lands to *A.* and his Heirs for ever, and if he die *without any Heir*, to *B.* is a void Deviſe to *B.* *Tilbury* v. *Barbut*, *H.* 1747, 3 *Atkyns* 617. 1 *Vezey* 89.]

Tho' there was a Promiſe by the Teſtator to give all to his Daughter and Heir, if the Father of her Huſband made a Settlement upon Him. *R.* 1 *Ch. R.* 239.

So, it does not relieve againſt a Revocation of a Will at Law. *R. Ca. Parl.* 157. *Semb. Cont.* 1 *Ch. R.* 43.

Nor

Nor does it relieve for a Legacy, before the Probate of a Codicil, by which it was given. *R. Hard.* 96.

Nor, for a Legacy for the Purchaſe of a Dukedem; for Honour ought not to be ſold. *R.* 1 *Ver.* 5.

So it does not ſupport a Deviſe for Payment of Debts, where the Teſtator by a Settlement, tho' voluntary, had deveſted himſelf of the Eſtate. *R.* 1 *Ver.* 464.

So, if a Will for a Perſonal Eſtate is obtained by manifeſt Fraud, after Probate in the Spiritual Court, Equity will not relieve. *R.* 2 *Ver.* 9, 76.

Yet a Legatee under ſuch a Will ſhall not be aided in Equity, notwithſtanding the Probate in the Spiritual Court. 2 *Ver.* 76.

[After Probate of a Will, a Court of Equity may enquire into the Fairneſs of a reſiduary Deviſe of Perſonal Eſtate. *Marriot* v. *Marriot, in Sc. M.* 12 *G. Str.* 666].

So a Deviſee ſhall not be eſtabliſhed in Poſſeſſion, againſt him, who claims by a Settlement, tho' the Deed is loſt. *R.* 2 *Ver.* 743.

So, if a Man deviſe three Tenements to his Wife, in Lieu of Dower, with Liberty to take her Dower, or the Deviſe, and afterwards ſells one Tenement; the Wife ſhall not be aided for the Value of the Tenement ſold; for ſhe ought to take the Eſtate under the Will, as it was at the Death of the Teſtator, or her Dower. *R.* 2 *Ca. Ch.* 24.

So, if a Man deviſes 1000*l.* to the Child of which his Wife is *enſeint*, if it is a Daughter, but if it is a Son, then that 100*l. per Ann.* ſhall be purchaſed and ſettled upon that Son in Tail, Remainder to *B.*; the Wife has a Son, who dies in the Life-time of the Teſtator, and he afterwards dies leaving his Wife *enſeint* of a Daughter, for whom no Proviſion was made; *B.* ſhall not compel the Settlement of 100*l. per Ann.* upon him, for the Circumſtances of the Caſe are altered. *Semb.* 2 *Ca. Ch.* 16.

So, if a Deviſe is to Truſtees for the Benefit of *B.* for her Life, and if ſhe has Iſſue, to be ſettled upon her Iſſue, and if ſhe has no Iſſue to the Heir of *C.* who had a Son *D.* and two Daughters *E.* and *F.* and afterwards *D.* the Son of *C.* deviſes to *G.* and afterwards *B.* dies without Iſſue; the Truſtees ſhall not be directed to convey to the Deviſee of *D.* for his Deviſe was void, being only of a Poſſibility, but to *E.* and *F.* the Daughters of *C.* *Eq. Abr.* 175. 3 *Lev.* 427, 428.

So, if the Words of a Will are not effectual, they ſhall not be ſupplied by Proof.

But a Deviſe may be explained by Witneſſes; as, if a Man deviſes his Manor of *D.* and he has two Manors of that Name; or to his Son *B.* and he has two Sons named *B.* 5 *Co.* 68. 2 *P. W.* 137.

[Parol Evidence is not admitted, except in two Caſes; 1ſt, To aſcertain the Perſon, when there are two of the ſame Name, or the Chriſtian or Sirname is miſtaken; 2dly, With regard to reſulting Truſts of Perſonal Eſtate. *D. per Hardwicke* C. *Ulrich* v. *Litchfield, T.* 1742. 2 *Atkyns* 372.]

[If a Perſon's Name is miſtaken in a Deviſe, yet if clearly made out by Averment to be the Perſon meant, and that there can be no other to whom it can be applied, the Deviſe to him is good. *Rivers's Caſe, M.* 1737. 1 *Atkyns* 410.]

[Parol Declarations have conſtantly been admitted in Caſes of Satisfaction of Legacies by Advancement in Teſtator's Life-time. *Shudal* v. *Jekyll, H.* 1742. 2 *Atkyns* 516.]

[If a Man gives his real and perſonal Eſtate equally among his Children, and directs his Executor to lay out a Sum not exceeding 300*l.* in putting out one of them Apprentice, and afterwards puts him Clerk in the Navy-Office with 200*l.* Parol Evidence ſhall be allowed to ſhew that this is an Ademption. *Roſewell* v. *Bennet, P.* 1744. 3 *Atkyns* 77.]

[Parol Evidence may be admitted to ſhew, that 500*l.* given to a Daughter's Huſband by the Father, in his Life-time, was in full of 500*l.* left her in his Will. *Biggleſton* v. *Grubb, T.* 1740. 2 *Atkyns* 48.]

[If *A.* leaves 200*l.* to one Executor, and 100*l.* to another, Parol Evidence may be admitted to prove Teſtator's Declaration before and after Execution, that next of Kin ſhould have nothing, and the Executors ſhall have the Reſidue. *Braſbridge* v. *Woodroffe, M.* 1740. 2 *Atkyns* 68.]

If

[If *A.* has two Children by a firſt Huſband, and four by a ſecond, and *B.* makes her Will, and gives 100*l.* to be divided among *the* four Children of *A.* and after ſeveral other Legacies adds, I further give to the Children of *A.* 300*l.* Parol Evidence ſhall be admitted to ſhew ſhe meant the Children of the ſecond Marriage in the firſt Bequeſt, but not in the ſecond. *Hampſhire* v. *Pierce*, *H.* 1750. 2 *Vezey* 216.]

[Parol Evidence may be admitted to ſhew that Teſtator had a great Affection for his Wife, and intended that ſhe, as his Executrix, ſhould have the Reſidue. *Lake* v. *Lake*, *M.* 25 *G.* 2. 1 *Wilſ.* 313.]

If the Deviſe is *to the right Heirs of his Mother's Side for ever*, when the Deviſor was Heir to his Mother's Mother; it may be proved that he intended his Heir of the Mother of his Mother, and not of the Father of his Mother. *R.* 2 *P. W.* 137.

So, if a Deviſe is of Perſonal Eſtate to a Wife, who is made Executrix, on a Bill brought by the Heir, that it ſhould firſt be applied for Payment of Debts, there may be Proof by Witneſſes, that it was intended to be exempt from Debts, but it was imagined not neceſſary to ſay ſo. 1 *P. W.* 9, 115. *R.* 2 *P. W.* 210.

[*B.* is indebted 3000*l.* on Bond to *A.* who deviſes all his Eſtate to *B.* and *C.* and makes them Executors; the Bond-debt is not releaſed; and tho' *C.* in an Anſwer acknowledges that it was Teſtator's Intention that it ſhould go to *B.* tho' the Attorney who drew the Will proves that Teſtator's written Inſtructions were to that Purpoſe, but that he told him it would be releaſed of courſe by *B.*'s being Executor; and that Teſtator, ſtill diſſatisfied, took Counſel's Opinion, who confirmed the ſame, and thereon Teſtator executed his Will, perſuaded the Bond would be extinguiſhed; yet this Parol Evidence cannot be admitted to contradict the expreſs Words of the Will. *Per Talbot C.* on Appeal from the Rolls; and the Chancellor's Decree affirmed by the Lords. *Brown* v. *Selwyn*, *M.* 8 *G.* 2. *C. T. T.* 240.]

[Parol Evidence ſhall not be admitted againſt the legal Operation of a Will or an implied Truſt, but it ſhall in Support of Law and Equity. *Taylor* v. *Taylor*, *T.* 1737. 1 *Atkyns* 386.]

[Parol Proof ſhall not be admitted in the Caſe of a Deviſe of a Guardianſhip. *Per King C.* *Storke* v. *Storke*, *T.* 1730. 3 *P. W.* 51.]

[Parol Evidence of Teſtator's Intention is not allowed when there is a Blank, tho' it is, to explain a Nickname, or where there are two Perſons of the ſame Name. *Baylis* v. *Attorney-general*, *H.* 1741. 2 *Atkyns* 239.]

[The Court will not add a Legacy to a Will on Parol Proof, if it concerns perſonal Eſtate only; and ſtill leſs, if it concerns real Eſtate. *Whitton* v. *Ruſſel*, *T.* 1739. 1 *Atkyns* 448.]

[If Lands are given to *A.* and *B.* and their Heirs, as Joint-tenants, and Leaſehold and perſonal to them and their Executors, with ſtrict Injunctions to Teſtator's Daughter, and Heir at Law, not to conteſt it, and a Paper ſigned by Teſtator gives ſtrong Intimations, it was in Truſt for charitable Uſes; and the Teſtator had by a former Will deviſed them to Truſtees for ſuch Uſes, yet ſuch Parol Evidence ſhall not be admitted to prove ſuch intended Truſt, as it would break in on the Statute of Frauds. *Adlington* v. *Cann*, *T.* 1744. 3 *Atkyns* 141.]

[Parol Evidence cannot be read to ſhew that Teſtator meant to uſe general Words in a particular Senſe, nor to ſhew that he intended *A.* ſhould, or that *B.* ſhould not be included in the Number of his Relations. *Goodinge* v. *Goodinge*, *P.* 1749. 1 *Vezey* 231.]

[But it may be read to ſhew that he knew *A.* or that he knew he had poor Relations at *S.* *Ibid.*]

[If *A.* deviſes to *B.* to ſell and pay Debts and Legacies, and to pay the Reſt to *C.* and *B.* dies, and *A.* has no Heirs, and the Eſtate eſcheats to the Crown; Chancery cannot decree a Sale to pay, *&c.* but the Exchequer, being a Court of Revenue, may. *Reeve* v. *Attorney-general*, *M.* 1741. 2 *Atkyns* 223.]

(3 A. 3.) How it ſhall be conſtrued.

(3 A. 3.) Deviſe for Payment of Debts and Legacies. *Vide Poſt*, (4 W. 14.)

What Words paſs a Fee, or other Eſtate, *Vide in Deviſe*, (N. 4, *&c.*)

If a Man deviſes Lands for Payment of his Debts and Legacies, and the Surplus to his Heir; the Perſonal Eſtate ſhall be firſt applied, in Aid of the Heir, as well for the Payment of the Legacies as of Debts. *R.* 29 *Car.* 2. *Ca. Ch.* 297.

Tho' the Reſidue of the Perſonal Eſtate is given to the Executor. *D.* 2 *Vent.* 349. *R. F, g.* 41.

[If *A.* charges his real Eſtate with Payment of Debts, Legacies and Funerals, and gives ſpecific Legacies to his Wife, and then makes her ſole Executrix of his Will, and *of all his Goods, Chattels and Arrears of Rent, not diſpoſed of by his Will.* The perſonal Eſtate ſhall be applied in Eaſe of the real. *Per cur. Lucy* v. *Bromley, H.* 1728. *Bunb.* 260.]

[If a Man bequeathes all his perſonal Eſtate to his Daughter, an Infant of ſeventeen, and makes her Executrix, and deviſes his Lands, *&c.* in *D.* to Truſtees to pay Debts and Legacies, and the Surplus to his ſecond Daughter in Tail, Remainder over, the perſonal Eſtate ſhall in the firſt Place be all applied to pay Debts. *Haſlewood* v. *Pope, T.* 1734. 3 *P. W.* 322.]

[If a Man deviſes thus, As to all my worldly Eſtate, both real and perſonal, I diſpoſe, *&c.* firſt all my Debts ſhall be paid, then deviſes his real Eſtate to Truſtees to ſell ſuch competent Part as ſhall be ſufficient to pay his Debts and Legacies, and that the Money to be raiſed by Sale of his real Eſtate ſhall be deemed as perſonal; and then gives all the Reſt and Reſidue of his perſonal to *A.* after Payment of his Debts and Legacies; the perſonal Eſtate ſhall be firſt applied to pay the Debts and Legacies, tho' Teſtator died indebted greatly above the Value of his perſonal Eſtate, ſo that *A.* takes nothing by the Deviſe of the *Reſiduum*. *Ld. Inchiquin* v. *Ld. O'Brien, H.* 18 *G.* 2. *Wilſ.* 82.]

[But if *A.* deviſes his Lands to *B.* his Wife for Life, chargeable with Annuities and Legacies, and gives her a Power by Sale or Mortgage to raiſe ſufficient to pay his Debts; then reciting his great Satisfaction that his Eſtate had continued ſo long in his Name and Family, and his Deſire to perpetuate it, deviſes all his real Eſtate to his Nephew, *&c.* they taking his Name and Arms, and then gives his perſonal Eſtate to his Wife, and makes her ſole Executrix; ſhe ſhall take it free from the Debts, and it ſhall not be applied in Aid of the real Eſtate. *Stapleton* v. *Colvile, T.* 9 *G.* 2. *C. T. T.* 202.]

[So, if a Man deviſes all his Eſtate in *Com' L.* to be ſold for Payment of Debts and Legacies, then deviſes Annuity of 200*l.* to *A.* out of his Eſtate not otherwiſe by Will engaged in *Com' N.* then gives *A.* ſeveral ſpecific Legacies, then gives *B.* 40*l.* Annuity out of Eſtate in *N.* makes *A.* and *C.* Executors, and duly executes, and a Year after interlines at the End of the Will, "And I give them (the Executors), all my perſonal Eſtate not herein before deviſed," and re-executes; the Executors ſhall have the perſonal Eſtate diſcharged of Debts, which ſhall be paid by Sale of the real Eſtate in *L. Walker* v. *Jackſon, T.* 16 *G.* 2. *Wilſ.* 24.]

If Land in *Holland*, where Land is ſubject to Debts, is deviſed to *A.* and the Perſonal Eſtate in *England* to *B.* the Perſonal Eſtate ſhall be firſt applied to the Payment of the Debts in *Holland*. *R. Eq. Ca.* 66.*

* 2d Part of 2 *Mod. Ca.*

So, if by Conveyance Land is ſettled for the Payment of Debts and Legacies, and afterwards, for the Performance of his Will, the Surplus to the Heir, and there is no Mention made in the Will, how the Perſonal Eſtate ſhall be diſpoſed of, but it is only ſaid, that his Daughters ſhall releaſe all Demands upon the Perſonal Eſtate, (they being intitled to a Dividend by the Cuſtom of *York*, and being the principal Legatees,) yet the Perſonal Eſtate ſhall be applied to the Payment of Debts and Legacies in Aid of the Heir. *R. Ca. Ch.* 297.

So if a Man deviſes his Land to *A.* which was mortgaged, or otherwiſe ſubject to his Debts; the Perſonal Eſtate ſhall firſt be applied to the Diſcharge of the Debts or Mortgage, in Aid of the Deviſee. 2 *Ca. Ch.* 84. *R.* 2 *Ver.* 112.

[If a Man deviſes Copyhold Lands (which are mortgaged) to *A.* and after his Debts paid, deviſes the Reſidue of his real and perſonal Eſtate to his Son *B.* and makes him Executor, the Mortgage ſhall be diſcharged out of the perſonal, then out of the real Eſtate deviſed to the Son, and then out of the Profits received by him ſince Teſtator's Death, *King* v. *King*, *T.* 1735. 3 *P. W.* 358.]

So a Charge in Equity ſhall be a Debt, and paid out of the Perſonal Eſtate. 2 *Ca. Ch.* 84.

[If a Man deviſes Lands to two Truſtees, and their Heirs, to be ſold for Payment of Debts, *&c.* and makes the Truſtees and a third Perſon Executor; the Lands when ſold are *legal*, not equitable Aſſets. *Ld. Maſham* v. *Harding*, *T.* 1734. *Bunb.* 339.]

So a Debt in Law, or Equity, ſhall be paid out of the Perſonal Eſtate, tho' by the Cuſtom of *York*, the Wife is intitled to one Moiety, and the next of Kin to the other. 2 *Ca. Ch.* 84. 1 *Ver.* 36.

So a Debt, which the Teſtator denied, ſhall be paid after other Debts. 1 *Ver.* 142, 431.

So, if there is a Deviſe of Land for Payment of Debts, and the Perſonal Eſtate to *B.* it ſhall be liable to the Payment of the Debts. *R.* 2. *Ver.* 183.

[If *A.* gives all his perſonal Eſtate to his three Siſters, and his real Eſtate to his four Sons, chargeable with his Debts, and makes his Siſters Executors, and dies indebted by Simple Contract, Bond and Mortgage; the perſonal Eſtate ſhall be firſt applied to pay all the Debts. *Bromhall* v. *Wilbraham*, *M.* 7 *G.* 2. *C. T. T.* 274.]

If a Man, reciting his Intent to pay his Debts and provide for his Children, ſettles Land for the Payment of Portions for his Children, (but nothing is ſaid of his Debts,) yet it ſhall be ſubject to the Payment of Debts as well as Legacies. *R. Ca. Ch.* 248.

If a Man deviſes Lands in *A.* to be ſold, and after his Debts, Legacies and Funerals paid, a Moiety of the Money to *B.* and the other Moiety to *C.* and afterwards deviſes all his other Lands to his Executors, and their Heirs, for the Truſts contained in his Will, and then orders, that they convey a Moiety to *B.* and the Heirs of his Body, with Remainders over, the other Moiety to *C. &c.* If the Land in *A.* is not ſufficient, all the Lands ſhall be charged to the Payment of his Debts and Legacies.

If a Surrender of a Copyhold be to the Uſe of a Man's Will, and by his Will he ſays, *My Debts and Legacies deducted, I deviſe all my Eſtate Real and Perſonal to A.* the Copyhold ſhall be ſold for the Payment of Debts. 1 *Ver.* 45.

[If *A.* ſurrenders cuſtomary Lands to *B.* who declares a Truſt thereof for ſeveral Perſons, and for ſuch Uſe as *A.* ſhall appoint, and *A.* makes a Will of his whole Eſtate and Effects, and firſt Wills, that all his Debts ſhall be paid, and then deviſes the Cuſtomary in diſtinct Parts from his other Lands, the Cuſtomary Lands are liable to the Debts. *E. Godolphin* v. *Penneck*, *P.* 1751. 2 *Vezey* 271.]

If Tenant in Tail levies a Fine, and declares the Uſe, to pay 100 *l.* and afterwards to the prior Uſes, and afterwards deviſes the Eſtate for the Payment of Debts generally; it ſhall be charged with all Debts. *Dub. Eq. Abr.* 139.

If a Man deviſes, that his Debts ſhall be paid out of his Real and Perſonal Eſtate, if the Executor pays beyond the Perſonal Eſtate, he ſhall be reimburſed out of the Real. 2 *Ca. Ch.* 109. 1 *Ch. R.* 134.

If *A.* deviſes that his Debts and Legacies ſhall be paid in the firſt Place, and afterwards deviſes Land; it ſhall be ſubject. *R.* 2 *Ver.* 708.

If *A.* deviſes Lands to *B.* in Tail, Remainder to *C.* in Fee, and afterwards gives his Perſonal Eſtate to *B.* and makes him Executor; the Real and Perſonal Eſtate are ſubject to the Debts. 1 *Ver.* 411.

So, if he deviſes an Annuity to the eldeſt Son, and his Land in Tail to the ſecond Son, and makes him Executor; the Land ſhall be charged with the Annuity. *R.* 2 *Ver.* 144.

[If *A.* gives his Daughter 3000 *l.* (beſides 12,000 *l* ſecured by his Marriage-Settlement) at eighteen, or Marriage, and directs his Truſtees to raiſe on his Lands as much as with his Perſonal Eſtate will pay the 3000 *l.* but not to raiſe it till eighteen,

eighteen, or Marriage, *that it may not be a Debt on his Perſonal Eſtate*; it ſhall be raiſed out of the Real Eſtate only. *Phipps* v. *Anneſley*, *M.* 1740. 2 *Atkyns* 57.]

[If a Man by his Will wills that his Eſtate in *L.* be ſold for the Payment of his Debts, Legacies and Funerals, and gives *A.* an Annuity and ſeveral ſpecific Legacies, and appoints *A.* and *B.* (who is Teſtator's Heir at Law) Joint Executors, and ſome Days after adds, And I give and deviſe to them all my Perſonal Eſtate not herein-before deviſed, and re-executes; the Perſonal Eſtate paſſes to them as a ſpecific Legacy, and ſhall not be applied to exonerate the Real Eſtate. *Walker* v. *Jackſon*, *T.* 1743. 2 *Atkyns* 624.]

[If a Man by his Will deſires all his Debts may be paid by his Executors, adding, I mean thoſe only of my own contracting, not thoſe heavier Debts by my Family, and gives his Perſonal Eſtate to his Mother, and makes her Executrix, deſiring her to pay all his juſt Debts exactly; and long after the Mother buys in the Mortgages, and the Son covenants to pay the Money; Teſtator dies, Mother dies, the Perſonal Eſtate is ſtill exempted from both Principal and Intereſt, on theſe Mortgages, and they are ſtill a charge on the Real. *Leman* v. *Newnham*, *M.* 1747. 1 *Vezey* 51.]

If a Man deviſes Land to *A.* and Legacies to others, and makes *A.* Executor, and deſires him to ſee that his Will be performed; the Land ſhall be charged with the Legacies. *R.* 2 *Ver.* 229.

[If a Man by his Will firſt gives an Eſtate for Life to his Wife, and in the latter Part creates a Term for Years, to take place from the Day of his Death, in Truſt to raiſe Money to diſcharge his Debts in ſuch Manner as his Wife ſhall direct, the Term ſhall take place of his Wife's Eſtate for Life. *Ridout* v. *Dowding*, *M.* 1737. 1 *Atkyns* 419.]

So, if he ſays, *As to all my worldly Eſtate, I will and deviſe in Manner following*; *Imprimis, that all my Debts be paid*, and then deviſes Lands, *&c.* 5 *G.* 2. 39.

[If a Will ſays, "As to all my worldly Eſtate, *my Debts being firſt ſatisfied*, I "deviſe," *&c.* the real Eſtate is liable to the Debts. *Harris* v. *Ingledew*, *H.* 1730. 3 *P. W.* 91. *Hatton* v. *Nichol*, *T.* 9 *G.* 2. *C. T. T.* 110.]

[If a Man charges his Land with Payment of his Debts, all the Debts he contracts during Life will be a Charge. *Brudenel* v. *Boughton*, *H.* 1741. 2 *Atkyns* 268]

[If a Man duly executes a Will, charging his Real Eſtate with Legacies, and by a ſecond Will, not executed in Form, gives general pecuniary Legacies, they are equally a Charge on the Land. *Ibid.*]

[The Words, All the Debts I have contracted ſince 1735, muſt be conſtrued, or ſhall contract. *Bridgeman* v. *Dove*, *M.* 1744. 3 *Atkyns* 201.]

[If *A.* by Will duly executed gives 800*l.* to his Siſter *B.* and 400*l.* to his Siſter *C.* and all his Freehold and Perſonal not diſpoſed of, after Payment of Debts and Legacies, to his Brother *D.* and by a ſecond Will, not duly executed, revokes all others, and gives 400*l.* to *B.* and 100*l.* to *C.* and the Reſidue Real and Perſonal to *D.* the Real Eſtate is chargeable with the latter Sums only. *Brudenel* v. *Boughton*, *H.* 1741. 2 *Atkyns* 268.]

[If a Man by Will charges his Real and Perſonal with Payment of his Debts, and then deviſes all his Real and Perſonal to *A.* and makes him Executor, and he pays the Intereſt of Debts to Bond-creditors who never demand the Principal, and he ſells the Real Eſtate, the Purchaſer ſhall not be diſturbed after long Poſſeſſion (ſixteen Years.) *Elliot* v. *Merriman*, *T.* 1740. 2 *Atkyns* 41.]

[If a Man creates a Term for Payment of Debts, and declares the Truſt of the Term to be *by Perception* of Rents and Profits, or by leaſing or mortgaging, to raiſe ſufficient to pay the Debts, it reſtrains it to Payment out of Rents and Profits, and the Court will not decree a Sale; otherwiſe, if it is a Truſt *of the Rents and Profits*. *Ridout* v. *E. Plymouth*, *M.* 1740. 2 *Atkyns* 104.]

[If one deviſes to *A.* her Heir all *Clifton* Lands, he paying all Debts and Legacies charged on them, and after his Deceaſe to *B.* *A.* muſt keep down the Intereſt, or if the Principal is paid, he pays one Third, and *B.* two Thirds. *Bridgeman* v. *Dove*, *M.* 1744. 3 *Atkyns* 201.]

[If

[If a Man by Will creates a particular Truſt out of particular Lands, and ſubject thereto deviſes them over, the Deviſees can take no Benefit but of the Remainder after the whole Burthen is diſcharged. *Powis* v. *Corbet*, *T.* 1747. 3 *Atk.* 556.]

[If a Man by Will recites that he had by a former Will given his Wife all his Real and Perſonal, that ſhe is dead, therefore he now diſpoſes of *the ſame*, and firſt orders all Debts to be paid; all his Real is liable by Application: But if he goes on and deviſes certain Premiſſes, except *A.* and *B.* to pay Legacies; this deſtroys the Implication, and the Creditors are not intitled to Payment out of *A.* and *B.* *Thomas* v. *Britnell*, *T.* 1751. 2 *Vezey* 313.]

[If the whole Real Eſtate is made liable to Debts and Legacies, the ſubſequent Deviſe of a Particular Part of it for that Purpoſe does not reſtrain it. *Elliſon* v. *Airey*, *T.* 1754. 2 *Vezey* 568.]

(3 A. 4.) In what Order they ſhall be paid.

Upon a Deviſe for Payment of Debts, Debts upon ſimple Contract, and upon Specialty ſhall be paid in Proportion; for in Conſcience they are equally due. *R. Ca. Ch.* 32. *R. per Finch*, *Ca. Ch.* 249. *R.* 2 *Ca. Ch.* 54. 1 *Ver.* 64, 102. *R. Ch. R.* 196. *R.* 2 *Ver.* 62. *R.* 2 *Ver.* 763. 3 *Ch. R.* 12. *Eq. Abr.* 141. 1 *P. W.* 228.

And if there is not ſufficient to pay all, the Loſs ſhall be equal. *R. Ca. Ch.* 32. *R.* 2 *Ca. Ch.* 54.

So Debts barred by the Stat. of Limitations ſhall be paid; for they are due in Conſcience, tho' the Stat. has taken away the Legal Remedy. *Per Cowper*, 1 *Sal.* 154. *R.* 2 *Ver.* 141. *Eq. Abr.* 139.

So, if the Intereſt upon a Bond exceeds the Penalty, and the Deviſee or Truſtee neglects Payment, he ſhall pay Intereſt for the Penalty. 6 *Sal.* 154. *Vide Poſt*, (4 D. 1, *&c.*)

After a Decree for Payment equally, one Creditor ſhall not be allowed to have Preference by obtaining a Judgment, *&c.* 2 *Ver.* 435, 525.

And if he takes out Execution at Law, the others ſhall have equal Proportion out of the Aſſets in Equity. 2 *Ver.* 436.

If a Note is given to *A.* for Part of Purchaſe Money, and the Purchaſer gives a Mortgage to *A.* for the Reſidue; *A.* ſhall not be preferred to the other Creditors of the Purchaſer, for the Note. 2 *Ver.* 281.

But Judgments ſhall be ſatisfied before other Debts; for thoſe in their Nature charge the Land. *R. Ca. Ch.* 32. 1 *Ver.* 102. 3 *Ch. R.* 12. If they are not confeſſed after the Bill exhibited. *R.* 2 *Ver.* 62.

So Debts fixed by Bond ſhall be paid before Damages not aſcertained. *R.* 2 *Ver.* 272, 273.

So Debts which affect the Real Eſtate bind according to Priority; as, Mortgages, Judgments, Statutes, and Recognizances. *R. in Parl.* 1705. 2 *Ver.* 525. *Eq. Abr.* 141, 2.

If the Recognizance is inrolled, otherwiſe not. 2 *Ver.* 750.

So Judgments, according to the Priority of the Originals. 2 *Ch. R.* 145.

A voluntary Bond, for the Benefit of a Wife, ſhall be paid after Debts upon ſimple Contract, and before Legacies. *R. Temp. G.* 2. 6.

And Debts ſhall be ſatisfied before Legacies. *Cont.* 2 *Ca. Ch.* 32. *Acc. per Finch*, *Ca. Ch.* 249. *R.* If it be by Deviſe, and not by Deed. *Ca. Ch.* 275. *Cont.* 1 *Ver.* 482. 2 *Ver.* 134. *R. acc.* 2 *Ver.* 248.

So, if Lands are deviſed to the Executor for Payment of Debts, they are Aſſets, and the Debts ought to be paid according to their Priority. 1 *Ver.* 64. *Vide Ante*, (2 G. 1.)

[If a Man deviſes Lands to Truſtees to pay all his Debts, and the Bond-creditors recover Part out of the Perſonal Eſtate, and then apply for the Reſt out of the Real Eſtate deviſed; they ſhall not come in on the Land till the Simple Contract Creditors have received thereout ſufficient to make them equal with the Bond-creditors, in reſpect of what they have received out of the Perſonal Eſtate. *Haſlewood* v. *Pope*, *T.* 1734. 3 *P. W.* 322.]

[If a *ceſtuique Truſt* of a Real Eſtate makes a Mortgage of it in Fee, and deviſes the Equity of Redemption to his Son and his Heirs, ſubject to his Debts, the Bond-creditors can have no Preference, as it was a Mortgage of the whole Inheritance. *Plunket* v. *Penſon*, *P.* 1742. 2 *Atkyns* 290.]

[But if a Reverſion in Fee was in the Mortgagor, the Bond-creditor would have Preference. *Ibid.*]

So, in all Caſes where there are Aſſets at Law, tho' the Creditors pray Aid in Equity. *R.* 2 *Ver.* 720, 405. *Eq. Abr.* 141.

So, if Land is deviſed to an Executor, to pay Mortgages in the firſt Place, then particular Legacies, and afterwards to the Executor in Fee; if he mortgages for the Payment of other Debts of the Teſtator, thoſe Mortgages, as well as the Mortgages of the Teſtator, ſhall be paid before the Legacies. *R.* 1 *Ver.* 69.

But a Deviſe that his Debts ſhall be paid, before the Legacies after mentioned, extends only to pecuniary Legacies, and not to Land expreſly deviſed for the Payment of particular Sums. 1 *Ver.* 457.

[If Lands are charged with Payment of Debts, and Part deviſed to *A.* Part to *B.* *&c.* the Creditors cannot be paid till the Maſter certifies what Proportion each Deviſee is to contribute. *Harris* v. *Ingledew*, *H.* 1730. 3 *P. W.* 91.]

(3 A. 5.) The Surplus ſhall be to the Heir.

If a Man deviſes Lands for the Payment of Debts and Legacies, and gives a Legacy to his Heir, the Deviſee has the Inheritance, without a Truſt to pay the Surplus to the Heir. *R. Ca. Ch.* 197. 2 *Ver.* 247. *R. Cont.* for the Surplus ſhall be to the Heir. 2 *Ver.* 425.

[If *A.* by his Will gives 5 *l.* to his Brother and Heir at Law, and makes his Wife his whole and ſole Heireſs and Executrix of all his Real and Perſonal Eſtate, the ſame to ſell and diſpoſe of as ſhe thinks proper, to pay his Debts and Legacies; the Surplus is to the Wife, and there is no reſulting Truſt for the Heir. *Rogers* v. *Rogers*, *M.* 4 *G.* 2. *C. T. T.* 268. 3 *P. W.* 193.]

But if a Man deviſes Lands for the Payment of Debts and Legacies, without more; the Surplus ſhall go to the Heir. *R.* 2 *Ca. Ch.* 115. 1 *Ch. R.* 164. *Semb.* 2 *Ver.* 247. *Vide Poſt*, (3 P. 3.)

Tho' he deviſes only a Term for Years. *R.* 2 *Vent.* 359.

So, if Truſtees raiſe Money ſufficient for the Payment of Debts and Legacies, and do not pay them; the Heir ſhall have the Reſidue of the Lands, and the Creditors and Legatees, muſt purſue their Remedy againſt the Truſtees. *R. in Part.* 1 *Sal.* 153.

So, if there is a Deviſe to Truſtees, but the Truſt cannot be proved; the Truſt ſhall be decreed for the Heir. *R.* 1 *Ch. R.* 101. *R. Eq. Ca.* 122.*

* 2d Part of 2 *Mod. Ca.*

If the Wife of the Teſtator, being Executrix, takes Huſband, who takes the Perſonal Eſtate as a Portion with his Wife, yet he ſhall account for it, for the Benefit of the Heir, tho' no Creditor is concerned. *R.* 2 *Ver.* 61, 569.

If *A.* deviſes Lands to Truſtees to be ſold, for ſuch Perſons as he ſhall appoint, and if he does not appoint then for *B.* if he appoints, but not to the Value; the Reſidue does not go to *B.* but to the Heir. *R.* 2 *Ver.* 571.

If a Man deviſes, that his Debts and Legacies ſhall be paid by the Truſtees of his Real Eſtate, and deviſes to his Wife, whom he makes his Executrix, the Reſidue of his Perſonal Eſtate; that ſhall be applied in the firſt Place in Aid of the Real Eſtate. *R.* 2 *Ver.* 569, 740. *Cont.* 1 *Lev.* 203.

Or, if the Reſidue of the Perſonal Eſtate was deviſed to the Heir. 2 *Ver.* 740. *Eq. Ca.* 129.

[But if a Man deviſes his Real Eſtate to Truſtees, for Payment of all Debts, Legacies and Funerals, then Specific Legacies, and then all the Reſidue of his Perſonal to his Executors, the Real Eſtate ſhall firſt be applied, and if not ſufficient, the Perſonal. *Bicknel* v. *Page*, *M.* 1740. 2 *Atkyns* 79.]

(3 A. 6.) When the Land ſhall be ſold. *Vide Poſt*, 4 H. 5.)

If a Man deviſes Money to be paid out of the Profits of Land, and the Profits do not amount to the Sum; the Land ſhall be ſold. *D.* 2 *Vent* 357. 1 *Ver.* 256.

So, if he deviſes, after his Debts paid, 500 *l.* for Portions to his Daughters, and to his Executrix all his Lands and Tenements, Goods and Chattels. In ſuch Caſe, if the Perſonal Eſtate and the Profits of the Lands are not ſufficient to pay Debts and Legacies; the Executrix ſhall be decreed to ſell the Lands. *R. Ca. Ch.* 179.

So,

So, if a Deviſe is of Portions for Daughters out of Land, to be paid at a Day fixed, and the annual Profits do not amount to a Sum ſufficient to make the Payment at the Day; the Truſtee may ſell the Land. *R. Ca. Ch.* 176, 240.

[If one has a Power to appoint to an unprovided Child, in ſuch Manner as he ſhall direct, the Payment of 200 *l.* to be raiſed by Truſtees out of the Rents and Profits of an Eſtate, and the Annual Profits are not ſufficient, it ſhall be ſold. *Green* v. *Belcher*, *H.* 1737. 1 *Atkyns* 505.]

So, if a Man deviſes that his Debts and Legacies ſhall be paid out of the Profits of his Land; the Land itſelf may be ſold for thoſe Purpoſes. *R.* 2 *Ca. Ch.* 205. *Eq. R.* 90.

So, if he deviſes Lands, *except the Manor of D. which I appoint for the paying of my Debts*; the Executors may ſell the Manor of *D.* for that is the moſt effectual Means for the Payment of Debts. *R. Sav.* 73.

[If *A.* deviſes his Copyhold Eſtate, one-third to his Wife for Life, and two-thirds to his Son, with a Proviſo, that if his Perſonal Eſtate, and his Houſe and Lands at *W.* ſhall not pay his Debts, then his Executors to raiſe the ſame out of the Copyhold; this intitles them to ſell the Copyhold. *Bateman* v. *Bateman*, *M.* 1739. 1 *Atkyns* 421.]

So, if he deviſes Rents and Profits to pay an Annuity, and afterwards to pay Debts and Portions, and afterwards to other Perſons; if the Debts and Portions cannot be conveniently raiſed without a Sale, it ſhall be decreed. *R.* 2 *Ver.* 26.

So, if he deviſes an Eſtate to *A.* in Tail, Remainder to *B.* &c. and gives Power to his Executor to raiſe Money for his Heir, and to pay Debts; the Executor may ſell. *R.* 2 *Ver.* 154.

So, if a Sale is convenient for the Heir, it ſhall be directed upon his Suit, tho' the Younger Sons oppoſe it, as well as for the Benefit of the Younger Sons, to whom Portions are given. *R.* 2 *Ver.* 154, 420.

But if a Man makes a voluntary Settlement, upon Truſt to pay Debts out of the Profits of the Land, the Truſtees cannot ſell. 1 *Ver.* 104.

So, if he deviſes Land for the Payment of Debts out of the annual Profits only. 1 *Ver.* 104. *Eq. R.* 90.

[The directing a groſs Sum to be raiſed does not neceſſarily imply that it ſhall be raiſed at once, and in ſuch Caſes the Court will not direct a Sale if not abſolutely neceſſary. *Okeden* v. *Okeden*, *M.* 1738. 1 *Atkyns* 550.]

[If a Man deviſes the Rents and Profits of his Plantation to Truſtees on certain Truſts, the Land ſhall not be ſold. *Conyngham* v. *Conyngham*, *T.* 1750. 1 *Vezey* 522.]

[If a Man deviſes, that Truſtees ſhall ſell his Real Eſtate, and what ariſes by ſuch Sale ſhall go to his Daughter, and her Iſſue, and if ſhe die without Iſſue, then to two other Daughters; the Land ſhall be ſold, and the firſt Daughter have the Money, notwithſtanding the contingent Intereſt of the others. *Ridge* v. *Hudſon*, *P.* 1717. *in Sc. Bunb.* 12.]

[If a Man having a Son and a Daughter, deviſes his Lands to Truſtees for paying Funerals, Debts and Legacies, then for raiſing Maintenance for his Children, and ſurplus Rents and Profits to the younger Children at Twenty-one, the Lands to the eldeſt at Twenty-three, the Land ſhall be ſold for Payment of Debts, the Legacies ſhall be paid as the Rents ariſe. *Baines* v. *Dixon*, *M.* 1747. 1 *Vezey* 41.]

(3 A. 7.) Who ſhall ſell.

If Land is deviſed for Payment of Debts and Legacies, and no Perſon named, who is to ſell; the Executor may ſell. *Ca. Ch.* 178. 2 *Jon.* 26. *R. Dal* 106. *Dy.* 371. *b.*

So, if it is deviſed to be ſold, and the Money to be diſtributed. *R. Ca. Ch.* 179.

So, if a Sale was decreed after a Contingency, and before that happens the Executor dies; his Executor, who claims the Land after his Death, may ſell. *Ca. Ch.* 180.

So, if a Sale is deviſed for Charitable Uſes, the Executor ſhall ſell. 2 *Jon.* 26.

So ſhall the Heir be decreed to join in the Sale. *Ca. Ch.* 262. *R.* 1 *Ch. R.* 168. *R.* 2 *Ver.* 99.

[If Teſtator deviſes all his Real and Perſonal Eſtate to be ſold for Payment of his Debts, and no Perſon named who is to ſell, the Executor and Heir, and all proper Parties to be named by the Maſter, ſhall join in the Sale. *Blatch* v. *Wilder*, *P.* 1738. 1 *Atkyns* 420.]

[If a Man deviſe Lands in *W.* to Truſtees, to raiſe Money by Sale to pay off what is due on Lands in *S.* mortgaged to *A.* and ſettled on *B.* in Fee, and his other Debts, and then to *C.* his natural Son; *A. B. C.* the Truſtees, and the Adminiſtrator, ſhall join in the Conveyance, and *B.* ſhall covenant againſt her own Acts, and the Acts of her Deviſor, as to ſo much as ſhe is benefited by the Eſtate. *Lloyd* v. *Griffith*, *M.* 1745. 3 *Atkyns* 264.]

So, if Land is deviſed for Payment of Debts and Legacies, and no Perſon named to ſell, and it deſcends to the Heir, the Heir ſhall be decreed to ſell. *R.* 1 *Lev.* 304. 1 *Ch. R.* 287.

So, if the Deviſe is, that the Executors ſhall ſell, and they die before a Sale, the Heir ſhall be decreed to ſell. *R. Ca. Ch.* 180.

So, if the Deviſe is for Portions of Younger Sons. *Agreed Ca. Ch.* 180.

So, if the Deviſe is for a Sale, and that the Money ſhall be diſtributed to Strangers. *R. Cont.* for that amounts to a total Diſheriſon of the Heir. *Ca. Ch.* 180. —*R. Cont. but it was reverſed in Parliament, and there R. acc.*

So, if the Deviſe is, that the Heir ſhall ſell; his Heir may ſell. 2 *Jon.* 26.

So, if the Deviſe is, that after the Death of *A.* the Land ſhall be ſold, without ſaying by whom, and *A.* is named Executor, and after his Death his Executor ſells; tho' the Sale by him is void, yet the Vendee ſhall have the Land. *R. cont. but it was reverſed in Parliament.* 2 *Jon.* 26.

So, if a Man deviſes, that *A.* and *B.* ſhall ſell, who are not Executors, and *A.* dies; *B.* with the Heir ſhall ſell, for it was a Truſt which ſurvived. *R. Hard.* 204. *Semb.* 1 *Jon.* 352.

So, if a Deviſe is of Land to *A.* and *B.* to be ſold, and the Heir is under Age; a Sale ſhall be decred, without giving the Heir, after he comes of Age, Time to join, for nothing deſcends to Him. *R.* 2 *Ver.* 429.

[If Lands are deviſed to Truſtees to be ſold for Payment of Debts, the Infant Heir at Law has no Day given him to ſhew Cauſe when he comes of Age; but where the Deviſe is to no Perſon, he has, *Blatch* v. *Wilder*, *P.* 1738. 1 *Atkyns* 420.]

So, if a Man deviſes Lands to be ſold by his Executors, or to his Executors to be ſold; an Intereſt veſts in the Executors. *Hard.* 419.

(3 A. 8.) How expounded, where the Words are ambiguous.

If a Man deviſes an Eſtate, to his Executors equally; it does not ſurvive. *R.* 1 *Ver.* 32. *Vide Poſt*, (3 V. 3.) *Vide in Deviſe*, (N. 8.)

If he deviſes, that Land ſhall be purchaſed with the Reſidue of his Perſonal Eſtate, for the Benefit of his Wife for Life, and afterwards for his Executors, equally to be divided, and one dies; the other ſhall not have the Whole, for it does not ſurvive. *R.* 1 *Ver.* 32.

[If a Man after giving Legacies to be paid at particular Times, deviſes the Reſidue of his Perſonal Eſtate to his two Sons, to be equally divided between them, and in Caſe of either of their Deaths, the whole Reſidue to be enjoyed by the Survivor; it ſhall be expounded, their Deaths before Twenty-one without Iſſue. *Mendes* v. *Mendes*, *H.* 1747. 3 *Atkyns* 619. 1 *Vezey* 89.]

[If one deviſes Real and Perſonal Eſtate to Truſtees, to turn all into Money, and then lay it out in Land to the Uſe of three Perſons for Life as Tenants in Common, not as Joint-tenants, but ſo that if either die without Iſſue living at the Time of his Death, that Share to go to the Survivors, then to Truſtees to preſerve, *&c.* then after their reſpective Deaths to the firſt and other Sons, then to Daughters, then to ten Grandchildren, their Heirs, *&c.* equally, as Tenants in Common, not Joint-tenants; and two of the Nephews and three of the Grandchildren die in Teſtator's Life, and third Nephew dies leaving a Son, he ſhall have only his Father's Share, the other two go over, but the Shares of the three Grand-

Grandchildren who died are not tranſmiſſible, but lapſe. *Sperling* v. *Toll, M.* 1747. 1 *Vezey* 70.]

[If Teſtator deſires the Reſidue may be divided between *A.* and *B.* it means equally divided, and they are Tenants in Common. *Peat* v. *Chapman, T.* 1750. 1 *Vezey* 542.]

If he deviſes the Reſidue of his Perſonal Eſtate to *A. B.* and *C.* and the Wife of *C. C.* and his Wife ſhall have only one third Part, the Wife only being a Relation of the Teſtator. *R.* 1 *Ver.* 233.

If a Man deviſes 200 *l. per Ann.* out of his Manor of *Walden*, and he has the Manor of *Walden* otherwiſe *Chippen Walden* of the Value of 80 *l. per Ann.* and another Manor of *Brook's Walden*; the Charge ſhall be upon *Brook's Walden*, which is of greater Value. 1 *Ch. R.* 138, 9.

If he deviſes 500 *l.* to the eldeſt Son of *B.* to be begotten, to put him out Apprentice, the eldeſt Son of *B.* born after the Death of the Deviſor, ſhall have it, before he is put out Apprentice. 2 *Ver.* 431.

If he deviſes Lands to Truſtees, for *A.* and *B.* for their Lives, and afterwards to the Children of *A.* and *B.* the Children afterwards born ſhall take in Common, with thoſe then in Being. *R. Eq. Ca.* 105.* * 2d Part of 2 *Mod. Ca.*

If a Deviſe is to the younger Children of *B.* who has a Son, who is his Heir; he ſhall not have any Part of the Thing deviſed, tho' he is younger in Age to the other Children. 1 *Ch. R.* 224.

Tho' he was originally the younger Son, but afterwards became the Heir. *R.* 3 *Ch. R.* 1.

So, if Portions are to be raiſed for younger Children, as the Father ſhall appoint; and he appoints to his ſecond Son, upon his Marriage, being of full Age, 2000 *l.* who ſeven Years afterwards becomes the Heir by the Death of an elder Brother without Iſſue; the Father may make another Appointment of this Sum, for younger Children; for the firſt was upon a tacit Condition, that the Son provided for ſhould continue a younger Son. *R.* 2 *Ver.* 530.

But if Land is ſettled to the Uſe of the ſecond Son of *B.* in Tail, if he takes the Name of the Donor; the ſecond Son ſhall have it, tho' he afterwards becomes the Heir. *R.* 2 *Ver.* 660.

If a Deviſe is of 20 *l. per Ann.* out of a Term for Years, if *A.* ſo long lives: If *A.* does live ſo long, and the Deviſee dies, his Executor ſhall have it; for the Payment continues during the Term. *R.* 2 *Ver.* 35, 666, 7.

[If a Man deviſe his Real Eſtate to his Daughters, ſubject to an Annuity to his Son till he attains forty Years, (hoping he will then have ſeen his Folly,) then to him for Life, with Remainders over, and the Son dies before forty, the Deviſe to the Daughters ceaſes. *Lomax* v. *Holmedon, H.* 1732. 3 *P. W.* 176.]

[But if the Deviſe was a Fund to pay Debts or Portions, it ſhould continue till ſuch Time as *A.* would have attained forty. *Ibid.*]

If a Deviſe is to the Deviſor's Wife for Life, and afterwards to his Son and his Heirs, *Proviſo* that if his Son dies without Iſſue, his Daughter ſhall have 200 *l.* If the Son has Iſſue at his Death, the Daughter ſhall not have the 200 *l.* tho' ſuch Iſſue dies within three Months afterwards. *R.* 2 *Ver.* 686.

If a Deviſe is of a College Leaſe to *A.* for Life, paying 10 *l. per Ann.* to *B.* and afterwards to *B.* the Renewal ought to be made by *A.* having a Proportion of the Fine from *B.* *R.* 2 *Ver.* 667.

If a Man deviſes 5 *l. per Ann.* to *B.* during the Life of his Wife, upon Condition that he behaves himſelf civilly to her, without ſaying, *to* B. *his Executors and Adminiſtrators*; if *B.* dies in the Life-time of the Wife, his Executor ſhall not have it; for the Bequeſt was Perſonal to *B.* *R. Pr. Ch.* 173.

If a Will is made in *Latin, Dutch, &c.* of Lands in *England*, it does not paſs the Inheritance, where there are not proper Words by the Common Law. 1 *Ver.* 85, 146.

If *A.* deviſes his Lands in *B.* but the Will is void for want of three Witneſſes, it is not ſufficient to deviſe a Term, which *A.* hath to attend the Inheritance, tho' the Words are ſufficient to have paſſed it, if it was a Term in Groſs. *R. Eq. Ca.* 127.* * 2d Part of 2 *Mod. Ca.*

[If a Man having Freehold and Leaſehold at *A.* deviſes all his Lands and Tenements at *A.* by Will, not in Preſence of three Witneſſes, neither Freehold nor Leaſehold paſſes; tho' had it been duly executed, the Freehold only would have paſſed, and had he had only Leaſehold, *that* would have paſſed. *Chapman* v. *Hart*, *T.* 1749. 1 *Vezey* 271.]

If a Will is written in Figures or obſcurely, it may be referred to a Maſter, to be aſſiſted by Perſons having Skill, to diſcover the Senſe. *P. W.* 425.

[If Words are repugnant or nonſenſical, they may be tranſpoſed or rejected; thus, if a Man gives his Daughter 6000*l.* for Life, and after her Death the Intereſt to be divided between her Huſband and Children, Huſband Half for Life, (*if no Children*, interlined) the Children the other Half; on his Death, his Half to the Children; till the Children attain Twenty-one, the whole Intereſt to Huſband; on his Death, they to have the remaining 3000*l.*; if no Children at Daughter's Death, or they die before Twenty-one, then on further Truſt mentioned:—If there are no Children, Huſband is intitled to the whole Intereſt for Life. *Boon* v. *Cornforth*, *P.* 1751. 2 *Vezey* 277.]

[A Deviſe of the Uſe of a Houſe for Life, Plate, Linen, *and every Thing elſe* her Occaſions ſhall require; and that all Goods, Furniture, Plate, Books, Pictures, *and every Thing elſe*, ſhall remain and be enjoyed by the Perſon in Poſſeſſion for the Time being:—In the firſt, *every Thing elſe* includes Proviſions, Wine, Corn, *&c.* in the latter not; in neither, Canes, Watches, *India* Pieces not made up, *&c.* *Ibid.*]

[If a Man gives the Uſe and Occupation of his Houſe, with Stabling and Fields, to his Daughter for Life, and then deviſes the three Fields to her for Life, without Waſte, and then over; the Clauſes are co-extenſive, and ſhe ſhall have the Uſe for Life. *Ibid.*]

So, if the Name of a Legatee is miſpelt or miſtaken. *P. W.* 425.

[If *A.* deviſes Lands to her Son *B.* and his Heirs and Aſſigns for ever, and if he dies in his Minority *and* unmarried, *or* without Iſſue, then to her Son *C.* his Heirs, *&c.*; this is a Fee to *B.* with an executory Deviſe to *C.* and if *B.* comes of Age, marries, and dies without Iſſue, the *or* ſhall be conſtrued *and*, and the Lands are ſubject to his Specialty Debts. *Framlingham* v. *Brand*, *M.* 1746. 3 *Atkyns* 390. *Wilſ.* 140.]

[If a Man by Will gives his Real Eſtate to his Wife for Life, and after her Death, and *Failure of Iſſue by him*, to his Siſter *A.* with other Remainders over, and all the Limitations are for Life; it ſhall be conſtrued that it means a Failure of Iſſue during the Lives in being, and ſo the Limitation be good. *Trafford* v. *Boehm*, *H.* 1746. 3 *Atkyns* 440.]

[If a Father by Will gives his Real Eſtate to his four Sons, their Heirs and Aſſigns, to be equally divided between them *as Tenants in Common, and not as Joint-tenants, with the Benefit of Survivorſhip*; and he has uſed the ſame Words in a former Clauſe relating to his Perſonal Eſtate, and giving them the Benefit of Survivorſhip, *in caſe any of them died before Twenty-one*; the Deviſe of the Real Eſtate ſhall be conſtrued in the ſame Manner. *Haws* v. *Haws*, *T.* 1747. 3 *Atkyns* 524. 1 *Vezey* 13. 1 *Wilſon* 165.]

[If *A.* by Will gives the Reſidue of her Eſtate, Real and Perſonal, to *B.* in Truſt, to pay the Produce to *C.* for Life, into her own Hands, for her ſeparate Uſe, and after her Death to her Children, *C.* has no Power to raiſe Money by Annuity for her Life; and if ſhe does, ſhe ſhall be at Liberty to redeem on paying Principal and Intereſt, tho' no Clauſe of Redemption. *Caverley* v. *Biſco*, *T.* 1747. 3 *Atkyns* 541.]

[If a Man by Will gives Lands (and his Perſonal Eſtate to be laid out in Lands) to charitable Uſes; then by Codicil, reciting his Will, the Mortmain Act, and his Doubts whether his Will is good, (yet being ſtill deſirous of confirming his Will) but if by Law the Eſtate cannot go to thoſe Uſes, he deviſes it to *A.* and his Heirs; and by another Codicil, reciting he is adviſed the Deviſe of his Lands would be void, and it being his Intention the Charity ſhould be continued, and being adviſed his Perſonal Eſtate can be given, he therefore gives his Perſonal Eſtate to the Charitable Uſes, and his Real Eſtate to *A.*—the Real Eſtate is well

deviſed to *A.* *Per B. R.* unanimous, and *Hardwicke* C. *Attorney-general* v. *Lloyd*, *T.* 1747. 3 *Atkyns* 551. 1 *Vezey* 32.]

[If a Man deviſes his Eſtate to *A.* to ſettle it on *B.* for Life, on *C.* for Life, and then on any Perſon or Perſons, for their ſeveral Lives, who are deſcended from Teſtator's Mother, with Power to revoke and appoint anew, provided it be to a Deſcendent of his Mother, his Deſire being, his Eſtate ſhould continue to Perſons always deſcended of his Mother; and adviſes that a Writing may be made to Truſtees for ninety-nine Years to the ſaid Uſes; *A.* may under this Will limit an Inheritance. *Godolphin* v. *Godolphin*, *T.* 1747. 1 *Vezey* 21.]

[If a Man deviſes his Real and Perſonal to Truſtees for his Daughter and her Heirs for ever, Proviſo, if ſhe dies before Twenty-one or Marriage, then to convey to his *neareſt Relation* of the Name of *A.* and to *his* or *her* Heirs, Executors, *&c.* for ever; Daughter dies under Age and unmarried, the Deviſe over is not void for Uncertainty, nor ſhall go to the Heir, nor be confined to a ſingle Perſon, but goes to the Stock of the *A.*'s who were neareſt, and as well thoſe who had changed their Names by Marriage as others. *Pyot* v. *Pyot*, *M.* 1749. 1 *Vezey* 335.]

[If a Man deviſes to his Son, "All that Eſtate I bought of *A.*;" both the Land, and all Teſtator's Intereſt in it, paſſes. *Bailis* v. *Gale*, *M.* 1750. 2 *Vezey* 48.]

[If a Man having a Reverſion in Fee deviſes to his Son the Reverſion of the Tenement *A.* a Fee paſſes. *Ibid.*]

[In a reſiduary Deviſe where *Eſtate* is mentioned generally, accompanied with perſonal Things, it ſhall be reſtrained to Perſonal; but where *Real* Eſtate is mentioned, the perſonal Things mentioned are conſidered as an Enumeration only. *Ibid.*]

[If *A.* deviſes all his Real and Perſonal in Truſt *by* *B.* *C.* and *D.* and deſires his Debts and Legacies to be paid, the Heir he ſhall mention to be well educated, and that the firſt Son of *E.* when Twenty-one, ſhall have all his Eſtate Real and Perſonal; the Perſonal paſſes firſt to the Truſtees for Payment of Debts, then the Surplus belongs to *E.*'s Son when Twenty-one, and ſhall accumulate till then; the Real Eſtate paſſes to Truſtees, and the Truſt is an Executory Deviſe to *E.*'s Son at Twenty-one; the Meſne Profits go to *E.* Heir at Law, till Son born, then to the Son for his Education; (but *Semb.* the Surplus, if any, belongs ſtill to *E.*) Q. Why ſhould not the Profits of the Perſonal Eſtate be alſo applied to the Son's Education? *Bullock* v. *Stones*, *T.* 1754. 2 *Vezey* 521.]

[If *Feme-covert*, with Power, deviſes to her Huſband for Life, then to her Children if ſhe ſhould leave any to ſurvive her, but if ſhe ſhould leave none, nor the Iſſue of ſuch, then to *A.* making him ſole Heir in Default of Iſſue left by her, and after the Huſband's Death; the Children take an Eſtate Tail, not Fee-ſimple, and the Remainder to *A.* is good; for it is not a contingent executory Limitation on her dying without Children living at her Death, but a general dying without Iſſue. *Southby* v. *Stonehouſe*, *T.* 1755. 2 *Vezey* 610.]

[Words ſhall receive a Conſtruction according to the Subject-matter, (as if Freehold and Leaſehold are deviſed by the ſame Words.) *Ibid.*]

[If *A.* having 400*l.* *South-Sea* Annuities, and 400*l.* *Eaſt-India* Stock, gives *B.* 10*l.* *per Annum* out of the Dividends of the *South-Sea* Annuities, and gives *C.* the 400*l.* *Eaſt-India* Stock, and gives *D.* the 400*l.* *South-Sea* Annuities, ſubject to the Payment to *B.* and he afterwards buys 100*l.* more *South-Sea* Annuities, and ſells the *Eaſt-India* Stock, and buys 800*l.* more *South-Sea* Annuities, and is afterwards paid off the firſt 400*l.* and the other 100*l.* *South-Sea* Annuities by a Draught, which he lodges with *E.* directing him to veſt it in three *per Cent.* Annuities, but *E.* veſts it in *South-Sea* Annuities, and *A.* makes a Codicil, and deviſes the Note for 500*l.* in *E.*'s Hands to *F.*; the Legacy of 10*l.* *per Annum*, and the ſpecific Legacies of the Funds are gone, and *F.* is intitled to the Produce of the Note. *Drinkwater* v. *Falconer*, *T.* 1755. 2 *Vezey* 623.]

[In a Deviſe of all his Stock in Trade, only Shop Goods and Utenſils in Trade are included; not Book-debts, Caſh, Bills, or Money in Goldſmiths Hands. *Seymour* v. *Rapier*, *in Sc. M.* 1718. *Bunb.* 28.]

When Words in a Deviſe ſhall be expounded otherwiſe than in a Deed, *Vide Legacy*, *Poſt*, (3 Y. 1.)

When

When a Deviſee ſhall have the ſame Privileges as an Heir, *Vide Legacy Poſt*, (3 Y. 2.)

(3 B) Diſcovery.

(3 B. 1.) When a Bill lies for a Diſcovery.

SO a Bill in Equity lies for Diſcovery of a Title and Deeds, *Vide Poſt*, (3 I. 1.)

[Every Heir at Law has a Right to a Diſcovery by what Means and under what Deed he is diſinherited. *Harriſon* v. *Southcote*, *T.* 1751. 1 *Atkyns* 528. 2 *Vezey* 389.]

[The Heir at Law has a Right to have Deeds and Writings produced, and lodged in proper Hands for his Inſpection, before he has eſtabliſhed his Title, and to remove Terms out of the Way that might prevent his recovering Poſſeſſion at Law. *Ibid.*]

[The Lord of a Manor may bring his Bill for Diſcovery of *Treaſure Trove*. *Sloane* v. *Heathfield*, *M.* 1717. *in Sc. Bunb.* 18.]

For Diſcovery of Court Rolls, Leidgers, *&c.* to be uſed at a Trial, which relate to the Plaintiff and Defendant. *R. Hard.* 180.

[Any Perſon in Poſſeſſion, as Tenant or otherwiſe, may bring Bill for Diſcovery of his Title who brings Ejectment againſt him, even tho' he is a wrong Doer againſt every Body. *Metcalf* v. *Hervey*, *T.* 1749. 1 *Vezey* 248.]

So it lies for a Diſcovery of Goods put on board a Ship, tho' inſured at a Sum certain, Intereſt or no Intereſt; for the Value of the Goods ſaved ought to be deducted out of the Sum to be paid for Inſurance. 2 *Ver.* 716.

So a Bill for Diſcovery of a Note, Deed, *&c.* lies after ſix Years are elapſed; for the Stat. of Limitations is no Plea to it. *R. Ch. R.* 14. *D. & Ch. Weſtminſter* v. *Croſs*, *in Sc. P.* 1720. *Bunb.* 60.

A Bill for Diſcovery ought to charge expreſly, that the Defendant has the Deeds, Goods, Aſſets, *&c.* *Ca. Ch.* 226.

[When a Man brings Bill for Diſcovery only of Deeds, and to have them eſtabliſhed, he ſhall annex Affidavit that he has them not, or it is Cauſe of Demurrer; but where he alſo prays Relief, Affidavit is not neceſſary. *Johnſon* v. *Elleker*, *in Sc. P.* 1720. *Bunb.* 46.]

[If a Bill is brought for Relief as well as Diſcovery of Deeds, an Affidavit muſt be annexed that Plaintiff has not the Deeds, or Defendant may demur. *Anon.* *M.* 1743. 3 *Atkyns* 17.]

[On a Bill for Diſcovery only, Plaintiff cannot reply, and muſt diſmiſs and pay Coſts, tho' he has had Diſcovery, and Defendant was the Occaſion of the Bill. *Calverly* v. *Parker*, *H.* 1722. *Bunb.* 124.]

If to a Bill for Diſcovery, it appears that there was ſuch a Deed, and that it is ſuppreſſed by the Defendant, there ſhall be a Decree for Enjoyment by the Plaintiff, until the Defendant produces the Deed; but not upon a Suppoſition of a Deed ſuppreſſed, when it does not appear, whether there was ſuch a Deed. 2 *P. W.* 680.

[If Plaintiff claiming by a Remainder in Tail, expectant on *B.* Tenant in Tail's dying without Iſſue, brings a Bill againſt the Siſters and Heirs of ſuch Tenant in Tail, who anſwer, that *B.* executed a Leaſe and Releaſe to make a Tenant to the *Præcipe*, ſuffered a common Recovery to the Uſe of himſelf in Fee, and refer to the Deeds in their Cuſtody, the Court will, before Hearing, order Defendants to leave the Deeds with their Clerk in Court. *Bettiſon* v. *Farringdon*, *T.* 1735. 3 *P. W.* 363.]

[The Counſel who draws a Deed of Annuity, and is Executor to the Annuitant, and ſubmits to produce the Draught by his Anſwer, and does not inſiſt on Privilege, as a Counſel, may be ordered to produce it before the Hearing. *Stanhope* v. *Roberts*, *M.* 1741. 2 *Atkyns* 214.]

A Defendant may be obliged to diſcover a Caſe which he had ſtated to his own Counſel for Opinion, and the Facts contained in the Caſe. *R.* on Demurrer, and affirmed by the Lords. *Ibid.*]

So

So a Bill lies for Diſcovery of Aſſets, to enable the Plaintiff to bring an Action at Law againſt an Executor, or Adminiſtrator. *Vide Ante*, (2 G. 3.)

And it lies before Probate, or *pendente lite* for a Probate. *Ver.* 49.

Or againſt an Heir.

[On a Bill for executing a Truſt, by ſettling an Eſtate on the ſeveral Branches of a Family, Plaintiff a younger Brother has a Right to a Diſcovery from an elder Brother, whether he has a Son who would be the firſt intitled to the Inheritance, but not, whether he is married. *Finch* v. *Finch*, *M.* 1752. 2 *Vezey* 491.]

So, for a Diſcovery of the Perſonal Eſtate of *B.* in the Defendant's Hands, after Judgment and Execution ſued againſt *B.* but not before Execution ſued. *Semb.* 1 *Ver.* 399.

[If a Bill is brought for Diſcovery of Bankrupt's Effects, the Court will not allow Defendants to look into their Depoſitions before the Commiſſioners, before they put in their Anſwers. *Boden* v. *Dellow*, *H.* 1747. 1 *Atkyns* 289.]

So a Bill for Diſcovery, to enable the Plaintiffs to bring an Action, was allowed, tho' the Action founded in *Tort*. *R.* 1 *Ver.* 307. 2 *Ver.* 442, 3,

As alſo, for a Diſcovery of Tithes, by Colour of a Sequeſtration, tho' it is a Treſpaſs againſt the Parſon. *R. Hard.* 182.

So, for a Diſcovery of a Matter, which ſubjects the Party to a Penalty, if he hath agreed to deduct the Value of thoſe Goods, which he had traded in, out of the Freight. *Q.* 2 *Ver.* 244.

[So for a Diſcovery of a Matter, which ſubjects the Party to a Penalty, if he has covenanted to anſwer any Bill of Diſcovery, and not to plead the Acts inflicting Penalties. *Eaſt-India Company* v. *Atkyns*, *P.* 5 *G. in Canc. Str.* 168.]

So, for a Diſcovery of Wine imported, for which Priſage is due. *Hard.* 138.

So, againſt an Auditor for a Diſcovery whether the Particular by him made is true; tho' he is finable for the Deceit to the King, if falſe. *Hard.* 138.

So, againſt a Woodward, if he cuts or waſtes the Woods of the King. *Ibid.*

[Every Perſon neceſſary to the Diſcovery ſhould be made a Party, to prevent Multiplication of Suits. *Plunket* v. *Penſon*, *T.* 1740. 2 *Atkyns* 51.]

[Diſcovery in Equity is not confined to the Rule of Law for inſpecting Books; thus the Lord of one Manor may have Leave to inſpect the Books of another Manor here, tho' not at Law. *Anon*, *T.* 1755. 2 *Vezey* 620.]

(3 B. 2. When not.)

But a Bill for Diſcovery of Deeds, or a Title does not lie againſt him, who is a Purchaſer for a valuable Conſideration, without Notice. *R. upon a Plea*, *Ch. R.* 35. *Vide Ante*, (I. 1.) *Poſt*, (4 I. 1, *&c.*)

So it does not lie for an Heir againſt a Jointreſs, if the Plaintiff does not confirm her Jointure. 1 *Ver.* 479.

Tho' the Jointure was made after Marriage, without Articles precedent 1 *Ver.* 479.

[A Widow is not obliged to diſcover on *Offer* to confirm her Jointure, till the Act of Confirmation is done. *Leech* v. *Trollop*, *T.* 1755. 2 *Vezey* 662.]

[On a Bill againſt a Jointreſs to deliver up one Part of Settlement, ſhe having two, the Court will not on Motion order it to be delivered up, that being the very End of the Bill, but to be produced before the Maſter. *Aſton* v. *Aſton*, *H.* 1745. 3 *Atkyns* 302.]

Nor, for a Diſcovery who has the Freehold of Lands, unleſs in the Caſe of Dower, or Partition. *Hard.* 139.

[If Plaintiff ſets out a Title, and that certain old Terms are ſtanding out, and Defendant does not plead, but ſets up a Title inconſiſtent with Plaintiff's, he is not obliged to diſcover what Deeds he has relating to his own Title; but if there is any Charge in the Bill that Defendant has Deeds of Plaintiff's Title, it muſt be anſwered. *Buden* v. *Dore*, *T.* 1752. 2 *Vezey* 445.]

So it lies not againſt a Deviſee, for Diſcovery of his Title by the Will, to the Heir. *Semb. Ch. R.* 36.

Nor, againſt him, who has Land contiguous, for Diſcovery of the Boundaries of his Lands in his Deeds. *R.* 2 *Ver.* 38.

Nor, againſt the Aſſignee of a Term, for a Diſcovery of the Beginning and Continuance of the Term, of which he was a Purchaſer. *R.* 2 *Ver.* 255.

So it lies not for him in the Remainder in Tail in a voluntary Settlement, after the Eſtate-Tail is diſcontinued. 2 *Ver.* 35.

Nor, for the Iſſue in Tail. *R.* 2 *Ver.* 50.

So. upon a Bill for the Diſcovery of a Deed, upon a Suggeſtion of a Truſt, if the Defendant denies the Truſt, he ſhall not be obliged to produce the Deed. 2 *Ver.* 463.

So a Bill does not lie, for the Diſcovery of a Matter, which ſubjects the Party to a Penalty or Forfeiture, if the Plaintiff does not waive the Penalty or Forfeiture. 1 *Ver.* 109, 129, 306. 1 *Ch. R.* 144.

And the Waiver ought to be by all thoſe, who can claim any Part of the Penalty or Forfeiture; for if the Penalty belongs one half to the King, and the other to a Corporation, the Waiver by the Corporation, and not by the Attorney General alſo, is not ſufficient. 1 *Ver.* 129.

As, it does not lie for a Diſcovery, whether the Party imported Cards without Licence; for it may ſubject him to the Penalty of the Stat. *Hard.* 138, 144.

For Diſcovery, whether he heard Maſs, took Uſury, *&c.* *Ibid.*

Whether he is a Popiſh Recuſant. *Hard.* 142.

[If a Bill is brought to diſcover whether *A.* under whoſe Will Defendant claims, was a Papiſt at the Time of purchaſing from Plaintiff's Anceſtor, Defendant is not bound to diſcover, but may plead the *Stat.* 11 & 12 *W.* 3. *Smith* v. *Read*, *H.* 1736. 1 *Atkyns* 526.]

[If a Bill is brought againſt *A.* and *B.* to diſcover whether *A.* and his Wife, under whom he claims, were not Papiſts, *B.* who purchaſed from *A.* is not obliged to diſcover, but may plead. *Harriſon* v. *Southcote*, *T.* 1751. 1 *Atkyns* 528. 2 *Vezey* 389.]

[No Man is obliged to diſcover what *may* ſubject him, not what *muſt* only. *Ibid.*]

[To a Bill for Diſcovery of a Marriage, Defendant may plead that it would ſubject her to Puniſhment for Inceſt in the Eccleſiaſtical Court, tho' the Huſband is dead. *Brownſword* v. *Edwards*, *H.* 1750. 2 *Vezey* 243.]

If a Portion is given *over* on Marriage without Conſent, Defendant may demur to Diſcovery of the Marriage only; tho' Diſcovery of the Conſent is not prayed, and altho' a Plaintiff is intitled to a Diſcovery of a Marriage in the Caſe of an Eſtate during Widowhood, with Remainder over; for the firſt is a Forfeiture, the laſt is only a conditional Limitation. *Chancey* v. *Fenhoulet*, *P.* 1751. 2 *Vezey* 265.]

[Defendant may plead to Diſcovery of an Act which would cauſe a Forfeiture, but not to Diſcovery of what Eſtate he hath, as whether Tenant for Life or not, tho' on that the Forfeiture depends. *Weaver* v. *E. Meath*, *M.* 1750. 2 *Vezey* 108.]

Whether he conceals Cuſtoms, or Exciſe. *Dub. Hard.* 137, 146, 201.

[If the Attorney-general exhibits an Information to diſcover Waſte, *&c.* he muſt waive Forfeitures. *Waters* v. *Vincent*, *H.* 1724. *Bunb.* 192.]

[On a Bill to ſtay Waſte, Plaintiff cannot have a Diſcovery unleſs he waives the double Penalty. *Boteler* v. *Allington*, *H.* 1746. 2 *Atkyns* 453.]

[If *A.* gives Bond to *B.* to pay 800 *l. per Annum*, whilſt he or any Body in Truſt for him holds a certain Office, *B.* ſues on the Bond, *A.* brings Bill for Injunction, *B.* Croſs-bill to diſcover whether *C.* does not hold the Office in Truſt; *A.* who is a Member of Parliament is not obliged to diſcover, for it would vacate his Seat; this he muſt inſiſt on by Anſwer, for demurring would have been admitting the Facts. *Honeywood* v. *Selwin*, *M.* 1744. 3 *Atkyns* 276.]

So a Bill does not lie, for a Diſcovery of Receipts and Acquittances given, or Payments made for Goods after a Recovery for the Goods in an Action at Law. 1 *Ver.* 176. 3 *Ch. R.* 17.

Nor,

Nor, for a Diſcovery of Things not examinable or relievable in Equity; as the ill Uſage of a Huſband to his Wife. *R. upon a Demurrer*, 1 *Ver.* 204.

Nor, for a Diſcovery of the Tenant of the Freehold, in order to bring a *Formedon*. *R.* 1 *Ver.* 212. 273.

Nor, for Diſcovery of the Profits of a Truſt Eſtate (if the Truſt is denied) till the Truſt is proved; for it is ſufficient that the Party ſhall afterwards be examined upon Interrogatories. *R. Ch. R.* 4.

Nor, againſt the Clerk of the Company of *Skinners* for a Diſcovery of Accounts and Books in his Cuſtody. which he is ſworn not to ſhew without the Conſent of the Company. *R. upon a Plea, Ch. R.* 24.

[The Court will not compel a Diſcovery to create Evidence for a future Cauſe. *Finch* v. *Finch*, *T.* 1752. 2 *Vezey* 491.]

Nor, for a Diſcovery of Aſſets againſt an Executor or Adminiſtrator, till Aſſets re denied by a Plea at Law.

Nor, for Diſcovery of Aſſets, upon a Decree to pay out of the Aſſets, till the Decree is ſigned, inrolled, and ſerved, *Ch. R.* 34.

Nor, for the Diſcovery of the Conſideration of a Bond (not obtained by Fraud, as it ſeems) after an Aſſignment thereof to the King. *R. Hard.* 200.

[The Court will not admit a Bill of Diſcovery in Aid of the Juriſdiction of the Eccleſiaſtical Court, for they can come at Diſcovery themſelves. *Dun* v. *Coates*, *M.* 1738. 1 *Atkyns* 288.]

[If a Bill for Diſcovery, and perpetuating Teſtimony, in praying Proceſs prays, that Defendant may abide the Order and Decree of the Court, it makes it a Bill for Relief, and ought to be diſmiſſed. *Roſe* v. *Gannel*, *H.* 1746. 3 *Atkyns* 439.]

[Bill for Diſcovery does not lie againſt one for what he may be examined to, as one who is merely a Witneſs claiming no Intereſt, but he muſt plead thereto, and ſupport it by Anſwer, diſclaiming Intereſt, and a Demurrer is bad. *Plummer* v. *May*, *H.* 1749. 1 *Vezey* 426.]

(3 C) Diſmes.

When Tithes ſhall be decreed in *Chancery*.

Vide Diſmes, (M. 13, &c.) *Vide Courts*, (D. 2.)

So *Chancery* will compel the Payment of Tithes. 2 *Ca. Ch.* 237. 1 *Ca. Ch.* 233.

[This Court never diſmiſſes a Bill for Tithes, unleſs there is a good legal or equitable Bar. *Douglas* v. *Vane*, *H.* 19 *G.* 2. *Wilſ.* 128.]

A Parſon or Impropriator, or his Leſſee, may exhibit a Bill againſt the Pariſhioners for Diſcovery and Payment of the ſingle Value of their Tithes. *Vide* 1 *Ver.* 60.

[The Owner and Leſſee of a Rectory may bring a Bill for Tithe in Kind, and ſo eſtabliſh a Cuſtom of ſetting out in Stooks, tho' there is a derivative Leaſe in being. *Archbiſhop of York* v. *Stapleton*, *H.* 1740. 2 *Atkyns* 136.]

So the Executor of a Parſon, &c. may exhibit a Bill for Arrears in the Time of his Teſtator, without offering to take the ſingle Value; for he is not intitled to the Penalty of the *St.* 2 & 3 *Ed.* 6. 13. *R. upon Demurrer.* 1 *Ver.* 60.

But the Parſon himſelf ought to make an Offer to take the ſingle Value. *Semb.* 1 *Ver.* 60. *Vide Diſmes*, (M. 13.)

But *Chancery* will not by a Decree eſtabliſh a *Modus*, and that the Land ſhall be diſcharged of Tithes *in Specie*, tho' there is a Verdict for the *Modus*. *Ca. Ch.* 187. *R. upon Demurrer*, 1 *Ch. R.* 27.

[If a Bill is brought to eſtabliſh a *Modus* againſt the Leſſee of the Impropriator, the Impropriator muſt be a Party alſo. *Glanvil* v. *Trelawney*, *in Sc. H.* 1720. *Bunb.* 70.]

[If a Bill is brought to eſtabliſh a *Modus*, and on an Iſſue directed there is a Verdict in Favour of the *Modus*, the Court will eſtabliſh it, and direct Coſts at Law, but not in Equity, to be paid to Plaintiff. *Clifton* v. *Orchard*, *H.* 1737. 1 *Atkyns* 610.]

[If the *Modus* is too rank (as 48*l. per Annum*, for the Tithes of a Manor, the whole Demeſne Lands of which were worth but 48*l.* in Q. *Elizabeth*'s Time) the Court will decree Tithes in Kind. *Ekin* v. *Pigot*, *H.* 1745. 3 *Atkyns* 298.]

[Tho' a *Modus* may appear ſomething too rank, yet if there is no other Objection to it in Law, nor any Evidence of Tithes being paid in Kind, this Court will not direct Payment in Kind without an Iſſue. *Chapman* v. *Smith*, *T.* 1754. 2 *Vezey* 506. *Ekins* v. *Dormer*, *T.* 1747. 3 *Atkyns* 534.]

[The Court will not grant an Injunction to ſtay Proceedings in the Eccleſiaſtical Court, on a Suggeſtion that there is a *Modus*. *Rotheram* v. *Fanſhaw*, *H.* 1747. 3 *Atkyns* 628.]

[Of late the Court does not require the Time of Payment of a *Modus* to be particularly laid, ſuch a Time *or thereabouts* is ſufficient. *Carte* v. *Ball*, *P.* 1747. 3 *Atkyns* 496. 1 *Vezey* 3. *Richards* v. *Evans*, 1 *Vezey* 39.]

[But a Cuſtom muſt be ſubſtantially laid, therefore it muſt be alledged *by whom* a *Modus* is to be paid. *Ibid.*]

[Setting up a *Modus* does not preclude Defendant from objecting to Plaintiff's Title to Tithes. *Ibid.*]

[If the Vicar be endowed *de omnib.' minut.' decim' inf. Paroch'*, he ſhall have a Decree for Tithes, after Verdict found, on Iſſue directed, that none had ever been paid to him, nor to a third Perſon, out of *A. Fox* v. *Rutty*, *in Sc. M.* 1721. *Bunb.* 87.]

[A Grant from Q. *Mary*, with the general Words *decimas bladorum et fœni, et omnes alias decimas*, are not ſufficient to bar a Rector of his Common Right of Tithes, unleſs it is expreſsly ſtated what was the Right of the Crown. *Ekins* v. *Dormer*, *T.* 1747. 3 *Atkyns* 534.]

So, if a Bill is filed in *Chancery* for the Tithes and Bounds of a Pariſh, and the Plaintiff, after Anſwer, exhibits a Bill in the *Exchequer*, and there proceeds to the Examination of Witneſſes, and then replies in *Chancery*; the Proceedings and Examination in the *Exchequer*, may be pleaded againſt an Examination for the ſame Matter in *Chancery*. *R. Ca. Ch.* 233.

So, if the Defendant has a Verdict and Judgment upon the *St.* 2 & 3 *Ed.* 6. 13. for not ſetting out Tithes *in Specie*, it may be pleaded to a Bill brought for a *Modus*. *R. Ch. R.* 13.

[This Court has Juriſdiction to inquire, whether the Lord Mayor of *London* has done right in refuſing to grant a Warrant to levy a Miniſter's dues, under *Stat.* 22 & 23 *C.* 2. *c.* 15. and if he has done wrong, to iſſue a Warrant for levying the Sum aſſeſſed. *Ex parte Croxall*, *P.* 1748. 3 *Atkyns* 639.]

[If the County in general is concerned in a Tithe Cauſe, (as *Kent*, in a *Modus* in *Romney* Marſh) the Court will order Trial in another, (as *London* or *Middleſex.*) *Chapman* v. *Smith*, *T.* 1754. 2 *Vezey* 505.]

[In Chancery an Account of Tithes ſhall be carried down to the Time of the Maſter's Report, in the Exchequer to the Time of filing the Bill only. *Bell* v. *Reed*, *M.* 1747. 3 *Atkyns* 590.]

(3 D) Diſtribution of Inteſtates Eſtates.

(3 D. 1.) By the St. 22 & 23 *Car.* 2.

CHANCERY will inforce a Diſtribution upon the St. 22 & 23 *Car.* 2. 10. concerning the Eſtates of Inteſtates. 2 *Vent.* 362. 1 *Ver.* 134. *Vide in Adminiſtration*, (H).

Tho' the Defendant pleads a Juriſdiction reſerved by the ſame Stat. to the Eccleſiaſtical Court to make a Diſtribution. *R.* 2 *Ca. Ch.* 95.

[An Eſtate *pur auter vie* is diſtributable in Equity, tho' not in the Spiritual Court. *Witter* v. *Witter*, *H.* 1730. 3 *P. W.* 99.]

So, if an Infant ſues for a Diſtribution in the Eccleſiaſtical Court, and afterwards ſues here, the Suit depending there, is no Plea to the Bill, for the ſame Cauſe, in *Chancery*. *Vide Poſt*, (3 Y. 3.)

[Aunts

[Aunts and Nephews are in equal Degree of Relation, and ſhall take *per Capita*, and not *per Stirpes*. *Durant* v. *Preſtwood*, *T.* 1738. 1 *Atkyns* 454.]

[If an Inteſtate leaves only an Aunt, a Son of a Brother, and a Daughter of a Siſter, they take equally. *Lloyd* v. *Tench*, *H.* 1750. 2 *Vezey* 213.]

[If *A.* and his Wife *B.* have two Sons, *C.* and *D.* who both marry in their Father's Life, *A.* dies, *B.* ſurvives, *C.* dies leaving Children, *D.* dies inteſtate, leaving *E.* his Widow. *E.* ſhall have Two-fourths, *B.* One-fourth, and the Children of *C.* One-fourth between them. *Stanley* v. *Stanley*, *P.* 1739. 1 *Atkyns* 455.]

(3 D. 2.) Who ſhall be excluded from a Share upon a Diſtribution.

But if an Huſband covenants, &c. that his Wife at his Death ſhall be worth 600*l.* and her Share under the Stat. of Diſtribution exceed that Sum; it goes in Satisfaction of the Agreement, and ſhe ſhall not have the 600*l.* and then her Share by the Stat. *R.* 2 *Ver.* 709.

[If by Articles before Marriage the Terms therein are declared to be to the Wife, *then an Infant*, in Satisfaction of all Claim of Dower, or any Claim by Common Law, Cuſtom of the City, or any other Uſage, Law or Cuſtom; the Wife has her Election at the Death of the Huſband, and if ſhe accepts the Terms in the Articles, ſhe cannot have a diſtributory Share on her Huſband's dying inteſtate, for that would be a Claim under a Law, *viz.* the Statute of Diſtributions. *Glover* v. *Bates*, *T.* 1739. 1 *Atkyns* 439.]

[If a Man by Articles previous to Marriage covenants by Will, or good Aſſurance in Law, to grant to his Wife, or her Mother in Truſt for her, 1000*l.* to be paid after his Death, if ſhe ſurvives; and if he ſhall not ſo aſſure, then his Executors or Adminiſtrators ſhall pay it; and he dies without making ſuch Deed or Will, ſhe is not intitled to her diſtributory Share. *Lee* v. *Cox*, *H.* 1746. 3 *Atkyns* 419. 1 *Vezey* 1.]

If a Man covenants to leave his eldeſt Son by his firſt Wife 500*l.* in caſe he marries a ſecond Wife, and he does marry a ſecond Wife, and dies Inteſtate; the eldeſt Son ſhall bring his 500*l.* into Hotchpot, if he comes for a Share of the Perſonal Eſtate. *R.* 2 *Ver.* 639. 2 *P. W.* 437.

So, if he covenants to leave to his Wife 1500*l.* in full of Dower, Thirds, Cuſtom of *London*, *or otherwiſe*, *out of his Real or Perſonal Eſtate*; ſhe ſhall not have Diſtribution upon the Stat. *R.* 2 *Ver.* 725.

[The Eſtate of an inteſtate, leaving a Brother and a Grandfather, ſhall go wholly to the Brother, the Grandfather has no Right to ſhare. *Evelyn* v. *Evelyn*, *H.* 1754. 3 *Atkyns* 762.]

(3 D. 3.) By Cuſtom.

So a Man may inforce a Diſtribution of the Goods of an Inteſtate, purſuant to a Cuſtom in the Province of *York*. 1 *Ch. R.* 79.

[If a Man dies inteſtate in the Province of *York*, leaving his Son *B.* who dies ſoon after, and his Wife *C. enſeint* of *D. D.* is intitled to her Share, as if born before Inteſtate's Death, and his Eſtate ſhall be divided into nine Parts, four of them *C.*'s, four of them *D.*'s, and the other ninth to be equally divided between them. *Wallis* v. *Hodſon*, *H.* 1740. 2 *Atkyns* 115.]

Or, upon the Cuſtom of *London*, 1 *Ch. R.* 84. 1 *Ver.* 61. *Vide in Gardian*, (G. 2.)

And if a Freeman of *London* dies Inteſtate, his Perſonal Eſtate ſhall be diſtributed, a Moiety, or Two-thirds according to the Cuſtom, the Reſidue according to the *St.* 22 & 23 *Car.* 2. 1 *Ver.* 134.—So, in *York*. *R.* 1. *Ver.* 305, 314, 432, 465.

And a Bill, for Diſtribution to the Wife of her Share, ſhall be allowed, tho' the Huſband had left *London* before his Marriage, and reſided in the Country for twenty Years, and ſettled a Jointure upon his Wife. *R. upon a Plea of ſuch Matter.* 1 *Ver.* 180. 2 *Ver.* 110.

If all the Children are advanced by the Father in his Life-time, the Diſtribution of the Whole ſhall be according to the *St.* 22 & 23 *Car.* 2. 1 *Ver.* 200. *R.* 2 *Ver.* 274.

If the Wife is barred of her Share by a ſpecial Agreement, it ſhall be diſtributed amongſt the Children. *Dub.* 2 *Ver.* 263.

If a Man deviſes a Moiety of his Eſtate to his Wife, ſhe ſhall have a Moiety by the Cuſtom, and alſo a Moiety of the Reſidue. 2 *Ver.* 111.

So, if a fraudulent Gift, &c. is made to prevent the Cuſtom, a Bill may be brought to avoid it. *Ch. R.* 16. 2 *Lev.* 130.

As, if a Man by Deed diſpoſes of his Goods in his Life-time, but keeps the Goods, or the Deed in his Cuſtody. 2 *Ver.* 277.

But if he abſolutely gives away the Goods, *bonâ fide*, in his Life-time to his Children, or otherwiſe, it will be no Fraud. *Ibid.*

(3 E) Dower.

(3 E. 1.) Wife favoured by Equity.

Vide Marriage Settlement, Poſt. (3 Z 1.) *Vide Ante,* (2 M. 12.)

IF a Woman is intitled to Dower by Law, *Chancery* does not bar her; as if *A.* for ſecuring 100 *l.* makes a Bargain and Sale to *B.* and his Heirs, to the Intent that he ſhould redemiſe to *A.* for Life, and upon Condition that the Bargain and Sale ſhall be void on Repayment; *B.* redemiſes, and afterwards *A.* repays the Money; the Wife of *B.* being dowable by Law, ſhall not be reſtrained by *Chancery*; for it was the Folly of *A.* that he did not make the Bargain and Sale to two Perſons, as is uſual. *Eq. Abr.* 217. *Cro. Car.* 190. *Vide Poſt,* (3 E. 2.)

If a Father purchaſes in the Name of his Son and gives him Poſſeſſion, who afterwards executes a Declaration of Truſt to the Father, but continues in Poſſeſſion, his Wife ſhall be endowed; for the Declaration of Truſt is fraudulent to Creditors and Purchaſers. *R. Eq. Abr.* 218.

If a Man deviſes an Eſtate for Payment of Debts, and afterwards to his Son in Tail; the Wife of the Son ſhall be endowed; for the Deviſe for Payment of Debts is but a Chattel Intereſt; but ſhe ſhall not have Poſſeſſion until the Debts are paid. *Eq. Abr.* 218.

So, if the Lands of the Huſband are ſequeſtred before Marriage, his Wife ſhall be endowed. *Ibid.*

If a Woman recovers Dower againſt an Heir being an Infant, when there was a Term to protect the Inheritance, which by Neglect of the Guardian was not pleaded; the Term ſhall not be ſet up againſt her in Equity. *Eq. Abr.* 219.

So a Woman ſhall be aided in Equity for her Dower againſt a Term for Years, which attends the Inheritance, if it is not in the Caſe of a Purchaſer, *R.* 2 *P. W.* 639, 646.

So, ſhe ſhall be intitled to the Equity of Redemption againſt a Mortgagee, paying a Third of the Principal, or a Third of the Intereſt. 2 *P. W.* 632.

So, if the Eſtate is in Truſt for *B.* and his Heirs, who directs the Truſtees to convey to his Son in Tail, at the Age of twenty-one Years; and after twenty-one, the Son marries and dies; his Wife ſhall have Dower of the Truſt Eſtate in Equity. *Per Jekyll,* 2 *P. W.* 641, 647.

So, of a Truſt Eſtate in Fee, made by the Anceſtor of the Huſband. *Semb. per Jekyll,* 2 *P. W.* 641, 650.*

**Vide* 3 *P. W.* 229.

[If *A.* buys Cuſtomary Freehold Lands, which are conveyed to him and *B.* and the Heirs of *A.* and *A.* deviſes them to his Son *C.* in Tail, and dies; and *C.* dies, living *B.*; *C.*'s Widow cannot have theſe Lands as her Free Bench, nor as Cuſtomary Dower, as it is out of the Truſt of a Freehold Eſtate, the legal Eſtate ſtanding out in *B.* *Godwin* v. *Winſmore, H.* 1742. 2 *Atkyns* 525.]

But a Woman ſhall not be endowed in Equity of an Eſtate limited to Truſtees in Truſt for the Huſband and his Heirs. *Eq. Abr.* 217. If it was done by the Huſband himſelf, or for the Benefit of a Mortgagee, or other Purchaſer. 2 *P. W.* 640.

[The Wife of a *Ceſtuique Truſt* of a Rent-charge is not to be endowed of it. *Chaplin* v. *Chaplin, H.* 1733. 3 *P. W.* 229.]

Nor

Nor of a Truſt Term, aſſigned for the Security of a Purchaſer. 2 *P. W.* 639.

So a Woman ſhall not be endowed, where her Huſband deviſes Land to her in Satisfaction of Dower, if ſhe does not waive the Deviſe; for ſhe ſhall not have both. *Vide Eq. Abr.* 218.

But a Deviſe ſhall not be intended to be in Bar of Dower, if it is not expreſſed: And therefore, tho' the Huſband deviſes a Perſonal Eſtate and Land to his Wife for Life, and the Reſidue of all his Eſtate to *A.* the Wife ſhall have Dower alſo. *R. Eq. Abr.* 218. *Vide Poſt*, (3 E. 2.)

[If a Woman marries without Settlement, and by Act of her Huſband is barred of her own Fortune, and he by Will deviſes her his Perſonal Eſtate at his Seat, and a Remainder for Life of his Real Eſtate, in Default of Iſſue Male and Female by himſelf, this does not bar her of Dower out of that very Eſtate. *Incledon* v. *Northcote*, *H.* 1746. 3 *Atkyns* 430.]

[If a Man by Will, taking no Notice of his Wife's Claim to Dower, deviſes her the Reſidue of his Perſonal Eſtate, it is no Bar to her Dower. *Ayres* v. *Willis*, *P.* 1749. 1 *Vezey* 230.]

[If a Widow intitled to Dower comes to account for the Profits of the Eſtate of which ſhe is in Poſſeſſion as Truſtee for her Son, ſhe ſhall be allowed for the Profits of her Dower, future, as well as paſt, and ſhall not be drove to her Writ of Dower. *Graham* v. *Graham*, *T.* 1749. 1 *Vezey* 262.]

[If a Widow ſuffers an Annuity granted to her by Settlement, and the Intereſt of Money left her by her Huſband's Will, to run in Arrear for eight Years during her Son's Life, ſhe ſhall have it againſt the Remainder over; for it ſhall neither be preſumed that ſhe is ſatisfied, nor that it was fraudulently intended in prejudice to the Remainder. *Aſton* v. *Aſton*, *T.* 1749. 1 *Vezey* 264.]

[The Court will not oblige a Jointreſs to bring her Jointure-deed into Court or before a Maſter, unleſs the Party requiring it will confirm it; but will order her to deliver in a Schedule of Deeds, to order what ſhall be produced. *Petre* v. *Petre*, *P.* 1747. 3 *Atkyns* 511.]

(3 E. 2.) Dower, When aided, and When not.

If a Woman has recovered Dower, *Chancery* will aſcertain her third Part by a Commiſſion. 1 *Ch. R.* 38.

[If Lands deſcend to two in Coparcenary, and one, before Receipt of Rent or Partition made, dies, his Widow ſuggeſting that the other has the Title-deeds, ſhall have Relief in Equity for that Reaſon, and becauſe ſhe muſt come there for a Partition. *Moor* v. *Black*, *T.* 9 *G.* 2. *C. T. T.* 126.]

If the Sheriff by Colluſion aſſigns a Third for Dower more valuable than either of the other third Parts of the Eſtate; the Court will direct a new Aſſignment. 1 *Ver.* 218. 2 *Ca. Ch.* 160. *Eq. Abr.* 220.

So, tho' there is not any Colluſion in the Sheriff, when the Aſſignment is not equal. 2 *Ca. Ch.* 160.

So, if the Huſband covenants that the Jointure ſhall be of ſuch a Value, the Wife may bring a Bill in Equity for Diſcovery of Aſſets and Satisfaction, tho' Equity does not decree Damages; but the Maſter upon ſuch a Bill ſhall report the Deficiency, and the Court will decree a Satisfaction, or a Trial. *Eq. Abr.* 18.

If *A.* makes a fraudulent Conveyance and afterwards marries, his Wife ſhall have Relief againſt it. *Eq. Abr.* 220.

So a Woman ſhall be allowed her Dower, tho' Land is deviſed to her for Life, and all the Real Eſtate to another, if it be not in Satisfaction of Dower. *Cont. per Lord Somers. Acc. per Wright*, 2 *Ver.* 365.* *Vide Ante*, (3 E. 1.)

So the Wife of one, who had the Truſt of a Copyhold, where the Cuſtom allows to the Wife her *Free-Bench*, if the Truſtees refuſe to ſurrender to the Huſband, ſhall be allowed her *Free-Bench* in Equity. *R.* 2 *Ver.* 585.

So a Woman ſhall not be reſtrained from having her Dower, where the Huſband makes a Settlement upon her in Conſideration of the Marriage Portion, if it is not expreſſed to be in Bar of Dower, and it does not appear to be expreſsly intended. *R. Eq. Ca.* 152.*

* *R. Acc. in Parliament. Eq. Abr.* 218, 219.

* 2d Part of 2 *Mod. Ca.*

[A general Proviſion for a Wife is not a Bar of Dower, unleſs expreſſed ſo to be; neither a general Deviſe of Lands, nor a Bond for Money; but if it is expreſſed to be for her Livelihood and Maintenance, it is a Bar. *Tinney* v. *Tinney*, *M.* 1743. 3 *Atkyns* 8.]

[But a Jointure made with Approbation of Parents and Guardians on an Infant ſhall not be ſet aſide becauſe it is inadequate to the Dower, unleſs it appears to be a mere eluſory Jointure. *Harvey* v. *Aſhley*, *P.* 1748. 3 *Atkyns* 607.]

[And if a Jointure is made after Marriage, and the Widow, ſtill an Infant, without doing any Act to determine her Election during her Infancy marries again, and the ſecond Huſband enters on the Jointure-Eſtate, that Entry binds them during Coverture.] *Ibid.*

If the Wife joins in a Fine to a Mortgagee, for barring her Dower, upon an Agreement by the Huſband, that ſhe ſhall have the Equity of Redemption in Lieu of Dower, and afterwards the Huſband makes two other Mortgages; the Agreement for the Redemption will be fraudulent as to the ſubſequent Mortgages, but the Wife ſhall have her Dower in Equity, notwithſtanding the Fine. *R.* 1 *Ver.* 294. *Eq. Abr.* 219.

If a Perſonal Eſtate is veſted in Truſtees upon Truſt to pay 100 *l. per Ann.* to the Wife in Lieu of Dower; tho' ſhe accepts it for many Years, if the Perſonal Eſtate afterwards proves deficient, ſhe ſhall be ſupplied out of the Real Eſtate. *R. Ch. R.* 134.

If *A.* deviſes Land for Payment of his Debts and Legacies, and afterwards to his Son in Fee; the Wife of the Son ſhall have Dower, from the Time the Debts and Legacies are paid, tho' her Huſband dies before that Time. *R.* 2 *Ver.* 404. *Eq. Abr.* 218.

But a Woman Tenant in Dower ſhall not have the Benefit of a Term to attend the Inheritance. *R.* 1 *Ver.* 357. *Ca. Parl.* 69. *Vide Poſt*, (4 G. 5.—4 W. 19, 22.)

[If *A.* purchaſes of *B.* a Real Eſtate in Mortgage for a Term, and it is agreed to pay off the Mortgage out of the Purchaſe-money, and to aſſign the Term to attend the Inheritance, which is done, *B.*'s Widow ſhall not have Dower. *Hill* v. *Adams*, *T.* 1741. 2 *Atkyns* 208.]

So a Woman, intitled to Dower of a Manor, ſhall not have a third Part of the improved Values of Copyholds, which her Huſband enfranchiſed after Marriage. *Ca. Ch.* 246, 7.

[If Huſband dies intitled to Copyhold Eſtates in a Manor whereof he is Lord, and the Sheriff eſtimates them upon the Writ of Inquiry for aſcertaining the Dower, this Court will ſet aſide the Aſſignment of Dower; and of ſuch Eſtates as the Huſband became intitled to by Copy of Court-roll, and granted out again by Copy of Court-roll, the Wife ſhall not have Dower; and as to Lands whereon Leaſes for Lives or Years were renewed by the Huſband, of thoſe which were not actually expired at the Renewal, ſhe ſhall not have Dower for the inſtantaneous Seiſin, but of thoſe which were expired, ſhe ſhall. *Sneyd* v. *Sneyd*, *T.* 1738. 1 *Atk.* 442.]

So a Woman ſhall not have Relief for Dower of an Eſtate, which was in Truſt for her Huſband. 1 *Ch. R.* 254. *Eq. Abr.* 217.

So, if the Huſband purchaſes Land of *A.* who has only an Eſtate for Life, but covenants that he in the Reverſion ſhall convey, and he conveys to the Heir of the Huſband; the Wife ſhall not have Relief in Equity for her Dower; for her Huſband was not ſeiſed, but only for the Life of *A. R. Ch. R.* 369.

So, if *A.* purchaſes *Whiteacre* of *B.* who makes him a Leaſe of *Blackacre* for ſecuring the Purchaſe, and dies, and his Son enters; the Wife of the Son ſhall not have Dower, other than ſubject to the Term. *Eq. Abr.* 219.

So, if a Wife having a Jointure of 400 *l. per Ann.* joins in a Sale thereof with her Huſband, who afterwards ſettles 150 *l. per Ann.* on Himſelf for Life, and afterwards on his Wife and the Heirs of her Body (without an Agreement that other Land ſhould be ſettled in Recompence) and afterwards dies without Iſſue, and the Wife ſuffers a Recovery, and deviſes for Payment of her Debts; he in the Remainder ſhall be aided againſt the Deviſee; for it was a Forfeiture within the *St.* 11 *H.* 7. *R. Eq. Abr.* 220.

So

So, if the Huſband gives a Bond to ſettle Land upon his Wife for Life, and afterwards to the Children; ſhe ſhall be barred of her Dower. *Per King*, 5 *Geo.* 2, 17.

So, a Wife ſhall not have a Proviſion by her Huſband for her Jointure, and alſo a Diſtribution upon the *St.* 22 & 23 *Car.* 2. *Vide Ante*, (3 D. 2.)

[When the Huſband dies ſeized, there ſhall be no meſne Profits till Demand; when he does not die ſeized, there ſhall be no meſne Profits; when the Widow is in Poſſeſſion ſhe may have Remedy at Law, if he have any Right to meſne Profits. *Delver* v. *Hunter*, *in Sc. H.* 1719. *Bunb.* 57.]

(3 F) Equity.

(3 F. 1.) Relief, when allowed in Equity.

A Court of Equity will give Aid principally in Caſes of Fraud, Accident, and Truſt. *Vide Ante*, (C. 2.—Z.) *Poſt* (3 M. 1.—4. W. 1.)

(3 F. 1.) In Caſes of Fraud, Accident, and Truſt.

And Equity will give Relief in ſuch Caſes, tho' it is agreed, that no Relief ſhall be prayed in Equity. 1 *Mod.* 305.

So Equity will relieve, tho' the Party himſelf upon Oath in a former Anſwer, &c. denied his Right to it. *Vide Poſt*, (4 W. 5.)

Tho' the Party has obtained a Judgment at Law. *Vide Poſt*, (3 W.)

[On a Bill againſt Judgment, on an abſolute Promiſſory Note, ſuggeſting that the Note was agreed to be conditional, Plaintiff was relieved, and was permitted to give Parol Evidence of the *Intent* of a Note in Writing Underhand. *Snowball* v. *Vicaris*, *T.* 10 *G. Bunb.* 175.]

[On a Bill againſt a Judgment, on Proof that two Notes, which would have been a Defence at Law, were miſlaid at the Trial, and ſince found. *Vernon* v. *Minſhul*, *T.* 1724. *Bunb.* 178.]

[On a Bill againſt a Judgment, by Default on a *South-Sea* Contract, and Iſſue directed to try whether the Defendant was poſſeſſed of the Stock. *N. B.* It appeared Plaintiff had been guilty of Subornation of Perjury. *Anſtruther* v. *Chriſtie*, *T.* 1724. *Bunb.* 178.]

[*A.* files a Bill againſt *B.* his Father, to recover (*inter alia*) 20,000 *l.* on Bond, conditioned to pay 10,000 *l.* and Intereſt, *B.* demurs, for that Plaintiff has Remedy at Law, Demurrer allowed, *A.* brings Action, and on *ſolvit ad diem* pleaded, obtains a Verdict; then *B.* files Bill, ſhewing the Bond to be voluntary, intended to be of Force only till ſome Settlement made, that he had ſince given him 10,000 *l.* on Marriage, covenanted to give him 10,000 *l.* more, ſettled 1,000 *l.* *per Annum* in Land in Poſſeſſion on him, transferred larger Quantities of Stock to him, the Bond thirty Years ſtanding and no Demand; he ſhall have Injunction. *Humphreys* v. *Humphreys*, *M.* 1735. 3 *P. W.* 395.]

Tho' the Contract be made originally by, or with the King himſelf. *Hard.* 373.

[If Plaintiff brings Bill for Diſcovery of Coals wrought under his Land, and for Satisfaction againſt ſeveral Defendants, ſome Executors, ſome Adminiſtrators, and it would be difficult for him to proceed at Law, the Court will retain the Bill. *Taylor* v. *Crompton*, *M.* 1721. *Bunb.* 95.]

[A Bill may be brought for a Preacher's Penſion only. *Bailey* v. *Cornes*, *M.* 1724. *Bunb.* 183.]

[If an Heir (of Age) is impoſed upon, by a Tradeſman's ſelling to him at exorbitant Prices in many Inſtances, the Court will relieve, not if in one Inſtance only. *Berkley Freeman* v. *Biſhop*, *P.* 1740. 2 *Atkyns* 39.]

[The Court will relieve an Heir againſt Fraud, whether the Eſtate in Expectancy is to come from his Father, or from any other Relation. *Ibid.*]

[If a Mortgage is taken to ſecure ſuch Price, the Court will relieve as far as the unjuſt Gain, but for what is found due on *quantum meruit* it ſhall ſtand good. *Ibid.*]

[If *A.* puts Mortgages into the Hands of *B.* to receive the Money, and he pawns them to *C.* for 100 *l.* for which he gives his Note, and takes *C.*'s to reſtore them on Payment, *C.* ſhall be decreed to deliver them to *A.* and take his Remedy at Law againſt *B.* on his Note. *Jackſon* v. *Butler*, *P.* 1742. 2 *Atkyns* 306.]

[Where one Party ſets up a Title inconſiſtent with the Title ſet up by another Party, and fails in his own Claim, yet he may appear to have a Right to ſomething under the other's Claim, and the Court will not deprive him of it. *Bennet* v. *Lee*, *H.* 1742. 2 *Atkyns* 529.]

[Shares in Waterworks (as the *New River*) tho' a legal Eſtate and corporeal Inheritance, are properly ſued for in this Court. *Ld. Townſhend* v. *Windham Aſh. P.* 1745. 3 *Atkyns* 336.]

[If an Eſtate has been ſold by *A.* to *B.* and the Money paid, and it appears that the Eſtate was *B.*'s, the Money ſhall be refunded with Intereſt for bringing the Bill, tho' there was no Fraud. *Bingham* v. *Bingham*, *M.* 1748. 1 *Vezey* 126.]

[If a Deed is deſtroyed or concealed by Defendant, Plaintiff may have Relief in Equity. *Whitfield* v. *Fauſſet*, *H.* 1749. 1 *Vezey* 387.]

[Or if the Deed is loſt, and Plaintiff cannot recover at Law without a *Profert*, he ſhall have Relief in Equity. *Ibid.*]

[If a Bill prays ſpecific Performance, and alſo general Relief, and the Court will not decree the ſpecific Performance, it will not give Relief on the general Prayer, if inconſiſtent with the particular Relief prayed. *Legal* v. *Miller*, *T.* 1751. 2 *Vezey* 299.]

(3 F. 2.) Where the Tranſaction is done *malâ Fide*.

So Equity will relieve where an Act is againſt good Conſcience, tho' Fraud is denied: As, where a Man ſues at Common Law, for a violent retaking of Money won by Play; an Injunction ſhall be granted. 1 *Ver.* 489, 490.

If *A.* unſeals and diſplaces Writings delivered to his Cuſtody, by which Evidence may be ſuppreſſed; his Demands ſhall be diſallowed, tho' he ſwears that all the Papers are produced. 1 *Ver.* 452.

If a Truſtee purchaſes the Eſtate for Life of the Huſband at an Under-value, when he abſconds from his Creditors, *Chancery* will direct a Reconveyance, for the Benefit of Creditors, upon Repayment of Principal and Intereſt. 1 *Ver.* 465.

[If a Leaſe is made of an Eſtate belonging to a Church, by a Deceit on the Court by the Rector, who takes a Fine, tho' not mentioned in the Propoſal laid before the Maſter, his Executor ſhall refund the Fine, to be laid out in Purchaſe for Benefit of Succeſſors; but the Leaſe ſhall ſtand good, if the Leſſee was not privy. *Galley* v. *Baker*, *T.* 9 *G.* 2. *C. T. T.* 199.]

If a Man advances Sums of Money to Young Perſons, and takes joint Securities of them for large Sums, each of them ſhall have his Security delivered up to him, upon Payment of the Money advanced to himſelf. 1 *Ver.* 467.

[If a Father intruſts his Heir (an Infant) to a Servant, the Son comes of age, and gives Bond for 1000 *l.* to the Servant, unknown to the Father, and not having wherewith to pay it, Equity will ſet aſide the Bond, as obtained by Fraud and a Breach of Truſt. *Oſmond* v. *Fitzroy*, *M.* 1731. 3 *P. W.* 129.]

[But Equity will not ſet aſide a Bond, if there is no Fraud or Breach of Truſt, merely becauſe the Obligor is a weak Man. *Ibid.*]

[If *A.* ſells an Annuity for his own Life to *B.* with a Clauſe of Redemption in three Years, and eleven Years after *A.* applies to *B.* to redeem, which he refuſes; the Court will order a Redemption, on Payment of the Annuity to the Time of the Application to redeem, and the principal Sum advanced, without Intereſt from that Time. The Annuity was purchaſed at ſeven and an half Years Purchaſe, which ſeems a fair Price. *Stanhope* v. *Cope*, *M.* 1741. 2 *Atkyns* 231.]

[If *A.* intitled to an Annuity on perſonal Security of 200 *l. per Annum*, being a Priſoner, ſells to *B.* 150 *l. per Annum*, Part of it, for 1050 *l.* with Proviſo that if *A.* deſires at any Time to purchaſe back ſaid 50 *l.* on ſix Months Notice, *B.* on Payment of ſaid 1050 *l.* (all Arrears of Annuity being paid) ſhall reſign; and there is an Indorſement, that if *A.* ſhould repurchaſe or *redeem*, *he ſhall pay* 75 *l. more*; this is unreaſonable, vitiates the Whole, and the Agreement ſhall be ſet aſide. *B.* ſhall reconvey, on Payment of Principal, Intereſt at 5 *l. per Cent.* and what Money has been actually paid for Inſurance; and if he is overpaid by Receipt of the Annuity, he ſhall refund. *Lawley* v. *Horper*, *M.* 1745. 3 *Atkyns* 278.]

So, if *A.* ſells an Office in the Army to *B.* and afterwards procures him to be turned out. 2 *Ca. Ch.* 82, 3.

If

If a Barriſter at Law undertakes the Recovery of an Eſtate to which *B.* hath a Right, and obtains of *B.* a Bond to ſurrender to him a Moiety of the Eſtate, when it ſhall be recovered; he ſhall be decreed to deliver up the Bond, and retranſfer the Eſtate, upon Payment of the Whole by him expended, with an Allowance for his Care. *R. Ch. R.* 477.

So, if a Truſtee for *A.* takes a Security for 600 *l.* with his Privity, of *B.* and afterwards for 600 *l.* aſſigns it to *C.* who relies upon the Word of the Truſtee; *A.* ſhall be relieved againſt *C.* tho' both are defrauded; for *C.* put the greater Confidence in the Truſtee. 2 *Ca. Ch.* 77.

[If an Attorney for the Seller on the Sale of an Eſtate does not diſcloſe to the Buyer an Incumbrance, he is liable to make Satisfaction. *Arnot* v. *Biſcoe*, *T.* 1748. 1 *Vezey* 95.]

If an Adminiſtrator during the Minority of an Infant ſells, as his own, the Stock of the Infant, in the *Eaſt-India Company*, to *B.* who by Entries in the Books of the Company hath Notice that it was the Stock of the Infant; the Infant ſhall be relieved againſt *B.* *R. Ch. R.* 298.

[If it is alledged that a Promiſſory Note for a large Sum was given to induce a Man to withdraw a Suit, and deliver up a Note of a third Perſon, (and this not with Intention of paying the Money, but as a Security of procuring a Living for him,) and the Note itſelf and the Conſideration denied, the Court will (without ſending the Queſtion of Forgery to Trial) order the Note to be left with the Regiſter, and if not ſued in reaſonable Time, to be delivered up. *Biſhop of Wincheſter (Hoadly)* v. *Fournier*, *T.* 1752. 2 *Vezey* 445.]

(3 F. 3.) When not.

(3 F. 3.) If a Man will not do Equity.

But a Man, who will not do Equity, ſhall not have Relief in Equity; as, if a Jointreſs hath a Leaſe, which ſhe confeſſes was to attend the Inheritance; on a Bill brought by the Heir for Deeds in her Poſſeſſion, on a Confirmation of her Jointure, ſhe ſhall not have her Jointure confirmed, without delivering up the Leaſe. 1 *Ver.* 480.

If *A.* ſues *B.* who purchaſed in Truſt for him, and paid the Money for making the Conveyance; on Repayment, *A.* ought alſo to pay all other Monies due from him to *B.* 2 *Ca. Ch.* 87.

[If *A.* has a Judgment againſt *B.* and alſo a Mortgage on his Eſtate, without Notice that *C.* has a Judgment ſubſequent to *A.*'s Judgment, but prior to the Mortgage; Equity will not direct a Sale of *B.*'s Eſtate on a Suit of *C.* and Conſent of *B.* unleſs *C.* will pay off the ſubſequent Mortgage as well as the prior Judgment. *Smithſon* v. *Thompſon*, *M.* 1739. 1 *Atkyns* 520.]

[This Rule does not extend to all Caſes, ſo as to tack together Things independent in their Nature, but the Court will lay hold of any Circumſtance for it, as Danger from abſconding or living abroad. So, if *A.* is decreed to account to *B.* who ought to convey an Eſtate to *A.* who has often abſconded, *A.* ſhall account before *B.* ſhall convey. *Shiſh* v. *Foſter*, *H.* 1747. 1 *Vezey* 88.]

If an Heir comes to redeem a Mortgage made by his Father, he ought alſo to diſcharge the Bond of his Father, in which the Heir is bound, or other Mortgage, defective, made by his Anceſtor, before a Redemption ſhall be allowed him. *Vide Poſt*, (4 A. 10.)

[If Tenant in Tail pays off a Mortgage without taking an Aſſignment of it, the Remainder-man ſhall pay it to his Repreſentative, or he ſhall not have an Aſſignment from the Mortgagee. *Kirkham* v. *Smith*, *T.* 1749. 1 *Vezey* 258.]

If a Man ſues Truſtees for the Portion of his Wife, he ought to make a ſuitable Settlement. *Vide Poſt*, (3 Z. 5, 6.)

If a Man deviſes Lands in Tail to one Son, and in Fee to another; the Son, who claims the Land in Fee under the Will, ought to releaſe his Intereſt to the Land intailed, to the other; *& e Contra.* 2 *Ver.* 582.

But if a Corporation, Truſtees for a Charity, make a Leaſe and covenant in Conſideration of 100 *l.* to be expended by the Leſſee for Repairs, to renew, and

the Leſſee covenants to pay an additional Rent; the Rent ſhall be paid, tho' the Corporation is not compelled to renew. *R.* 2 *Ver.* 412.

(3 F. 4.) If his Actions are wrongful.

So, if an Obligor prays Relief from the Penalty of a Bond given to maintain a Baſtard, and for Payment of 50 *l.* to the Woman; if it appears that he was a Suitor to the Woman, and abuſed her, he ſhall not have Relief, tho' he brings the 50 *l.* into Court. *R.* 2 *Ca. Ch.* 15.

So, if a Man, by Practice, obtains a Bond of 1600 *l.* upon the Loan of 90 *l.* he ſhall not have Relief out of the Truſt Eſtate of the Obligor, for any Part of the Debt, tho' 90 *l.* was *bonâ fide* due. *R. Ca. Ch.* 202.

If a Woman, who elopes, and is divorced *a Menſa & Thoro*, ſues for a Settlement made by her Huſband for Alimony, ſhe ſhall not be aided. 1 *Ver.* 53. *Semb.*

If there is a Covenant that Tin ſhall be delivered Cuſtom-free to *B.* and the Tin is afterwards ſeized for the Cuſtoms; *B.* ſhall not be relieved. *Ca. Ch.* 256.

(3 F. 5.) Tho' a Man's Expectation is fruſtrated.

So Equity will not give Relief againſt a Contract by *A.* tho' his Expectation is fruſtrated, where no Default was on the other Side: As, if a Bond be to give 100 *l.* to *B.* if he ſurrenders his Office, which is with an Intent that the Obligor ſhould obtain it; if he does not obtain it, if *B.* ſurrendered, he ſhall not be relieved. *R.* 1 *Ver.* 98, 9.

[If *A.* agrees with *B.* for a Number of Tickets at a ſtated Price, and all Profit to be *A.*'s, but he loſes by them; the Court will not relieve, even if it was a hard Bargain, unleſs there is Fraud or undue Means. *Willis* v. *Jernegan*, *H.* 1741. 2 *Atkyns* 251.]

(3 F. 5.) Nor when a reaſonable Benefit has accrued to another by Law.

So Equity does not take away a reaſonable Benefit, which accrues to another by ſtrict Rules of Law; as, if a Marriage Settlement is made to *A.* for Life, and afterwards to his firſt, ſecond and other Sons in Tail Male, and if no Son living at the Death of *A.* to the Uſe of his Daughters, till ſuch Portions paid; *A.* dies having Daughters, but no Son living, his Wife *privement enſeint* with a Son, afterwards born; Equity will not take away the Portions veſted by Accident in the Daughters, tho' contrary to the Intent of the Parties, if it is a reaſonable Proviſion. *Semb.* 2 *Ver.* 579.

[If *A.* Mother of *B.* Wife of *C.* is ſeiſed in Tail *ex Proviſione Viri* of Lands, Reverſion in Fee to her Huſband, and *B.* and *C.* create a Mortgage-term on theſe Lands, and *A.* joins in levying Fine to the Uſe of the Mortgagee, Remainder to ſuch Uſes as *C.* ſhall appoint, or in Default to him and his Heirs; and before this *C.* has ſold an Eſtate to *D.* and covenanted for quiet Enjoyment, and afterwards makes an Appointment to Truſtees of *B.*'s Eſtate; *D.* is evicted, *C.* dies, *A.* dies; if it does not appear that the Breach of *C.*'s Covenant by the Eviction of *D.* happened before the Appointment made by *C.* the Court will not grant Relief. *White* v. *Sanſom*, *H.* 1746. 3 *Atkyns* 410.]

[The Court will not relieve againſt a Maſter's Right to his Apprentice's Earnings, who quits his Service before his Time, (tho' he goes to Sea and takes a great Prize, but in that Caſe recommends them to compound, and favourably for the Apprentice.) *Meriton* v. *Hornſby*, *M.* 1747. 1 *Vezey* 48. *Hill* v. *Allen*, *H.* 1747. 1 *Vezey* 83.]

(3 F. 7.) Nor againſt a Statute.

So Equity will never give Relief againſt a Proviſion by Act of Parliament: As, if a Leaſe by a Biſhop, *&c.* is void; tho' the Leſſee has Equity againſt the Biſhop, he ſhall not be relieved againſt his Succeſſor; for the Stat. which makes the Leaſe void, does not ſave any equitable Right. *Ca. Ch.* 227.

[If a Truſtee, in Breach of Truſt, preſents a Man to a Living; after ſix Months Plenarty this Court will not give Relief, for it is againſt *Stat. Weſtminſter* 2d. *Boteler* v. *Allington*, *H.* 1746. 3 *Atkyns* 453.]

So, if a Court erected by Act of Parliament determines a Thing, within their Juriſdiction, there ſhall be no Relief in Equity. *R. Ch. R.* 320.

[But if new Act of Parliament is made to alter the Law, and the Judges are formal in adhering to Rules of Law, and will not conſtrue according to the Words and Intentions

Intentions of the Act, (tho' it is their Buſineſs to mould their Practice ſo as to render it conformable to the Legiſlature,) there Equity will take it up, and give Remedy. *Baſſet* v. *Baſſet*, *M.* 1744. [3 *Atkyns* 203.]

(3 F. 8.) Or a Maxim at Law.

Nor contrary to an expreſs Maxim of the Common Law, unleſs in Caſe of Fraud, *&c.* as, if an Obligee releaſes to one Obligor only, he ſhall not have Aid againſt the other, tho' he did not intend to releaſe the other. *R.* 1 *Rol.* 374. *l.* 21.

If a Deed or Will is not duly executed, Equity will not relieve. 2 *Ver.* 475.

If one Executor receives and releaſes the whole Debt, the other ſhall not be relieved. *Mo.* 620.

Or, one Jointenant; tho' there was a Bill againſt the Debtor, or an Agreement to divide the Debts.

So, there ſhall be no Relief againſt a Deſcent according to the Rules of Law, tho' the Eſtate is in Truſt. 2 *P. W.* 668, 9.

[If a Man has loſt his Right by a legal Bar, he can have no Remedy. *Brereton* v. *Gamul*, *H.* 1741. 2 *Atkyns* 240.]

But upon Circumſtances, *Chancery* will direct contrary to a Rule in Law, As, upon a Bill, it will change the *Venue* to another County, by reaſon of the great Power of the Defendant in the proper County. 1 *Ver.* 439.

(3 F. 9.) Not where the Plaintiff has the ſame Relief by Law.

So, if the Plaintiff has equal Relief and Benefit by the Law; as upon a Bill by the Executors of the Huſband, to be relieved againſt a Contract of the Wife, becauſe ſhe had eloped, and had a ſeparate Maintenance, and that it was known to the Defendant; for this is a good Defence to an Action at Law. 1 *Ver.* 71.

So if a Bill be againſt an Executor for Debt, tho' the Debt is proved in Equity, the Plaintiff ſhall not be relieved till a Recovery in an Action at Law; and then he ſhall have an Account whether there are Aſſets. *R.* 2 *Ver.* 192.

[But if a Bill be brought to diſcover Aſſets and Payment of a Bond, and there is no Diſpute as to the Bond or Aſſets, Equity will provide for the Payment of the Debt. *Heath* v. *Percival*, *M.* 7 *G.* *Str.* 403. *Biſhop* v. *Church*, *M.* 1750. 2 *Vezey* 100.]

[Where the Executor or Adminiſtrator confeſſes a liquidated Debt, there Diſcovery draws on Relief, otherwiſe not. *P. Gilbert* Chief Baron. *Alpot* v. *Thompſon*, *in Sc.* *P.* 1726. *Bunb.* 29.]

[If on coming in of Anſwer to a Bill for Diſcovery of Aſſets and Relief, Plaintiff makes his Election to proceed at Law, yet he may afterwards, on agreeing to drop that Part of the Bill which prays Relief, have the Order of Election diſcharged. *Fitzgerald* v. *Sucomb*, *M.* 1740. 2 *Atkyns* 85.]

[If the Repreſentative of an Inteſtate is ſeeking to give Preference by confeſſing Judgments, the Court will let Plaintiff proceed at Law to get Judgment with Stay of Execution, and in this Court for Diſcovery of Aſſets, at the ſame Time. *Barker* v. *Dumareſque*, *H.* 1740. 2 *Atkyns* 119.]

[If there is a Judgment obtained for a Partnerſhip Debt againſt *A.* ſurviving Partner and one of the Executors of *B.* and *A.* gives a Mortgage on the ſeparate Eſtate of *B.* Equity will order Satisfaction out of the Mortgage, without ſending them to Law. *Jacomb* v. *Harwood*, *P.* 1751. 2 *Vezey* 265.]

If an Executor pleads to three Actions, *No Aſſets ultra* 100 *l.* where he hath only 100 *l.* Aſſets *in toto*; he ſhall not be relieved in Equity; for it was his own Fault to plead negligently. 1 *Ver.* 119.

So Equity does not aid, if the Defendant by the Miſtake of his Attorney pleads an improper Plea. *R.* 2 *Ver.* 325.

[If a Bill is brought to diſcover Aſſets and for Relief, the Court will grant Relief if the Defendant joins Iſſue, not if he demurs. *Depuis* v. *D. of Kingſton*, *T.* 1718. *Thomas* v. *Williams*, *in Sc.* *M.* 1718. *Bunb.* 29.]

So Equity does not give the ſame Relief, which the Plaintiff may have by an Action at Law.

[If a Bill is brought for Treaſure-trove, Plaintiff ſhall have no Relief; for he might have brought Action of *Trover*; and Bill diſmiſſed with Coſts. *Sloane* v. *Heathfield*, *in Sc.* *M.* 1717. *Bunb.* 18.]

[A Bill for several Tolls, where the decree would bind only the Defendants, dismissed. *Disney* v. *Robertson, in Sc.* (*P.* 1719. *Harding* v. *Ainge*, *T.* 1719. *Bond* and *The City of Exeter*. *Bunb.* 141.]

[But if a Fee-farm Rent is reserved, it gives the Court of Exchequer Jurisdiction. *Per Montague B. cæt. dissent.* *Attorney-general* v. *Eyre, in Sc. M.* 1720. *Bunb.* 68.]

[Bill for a Toll due to a Town does not lie, tho' a Fee-farm Rent is payable by the Town. *Nottingham* v. *Wood*, *M.* 1733. *Bunb.* 330.]

[Bill for Beaconage dismissed. *Mayor of Boston* v. *Jackson*, *H.* 1721. *Bunb.* 101.]

[So for Suit of Court. *Thornhagh* v. *Hartshorn*.]

[So for Fee-farm Rent, or Law-day Silver. *Pynsent* v. *Skillings*, *T.* 1727. *Bunb.* 237.]

[A Bill to have the Enjoyment of a Watercourse, and Damages for stopping it, does not lie. *Reignolds* v. *Hind*, *P.* 1729. *Bunb.* 264.]

[If *A.* gives voluntary Deed to pay *B.* 60*l. per Ann.* with Power to distrain on Lands, or to pay *B.* 1000*l.* with Interest, and *B.* brings Bill, setting forth, that the Lands are incumbered, and to be paid one or the other, and *A.* brings Cross-bill, and at the Hearing *B.* does not prove that the Lands were so incumbered that she knew not where to distrain, the Court will retain the Bill till *B.* has tried her Remedy at Law. *Thurkettle* v. *Howorth*, *M.* 1727. *Bunb.* 241.]

[If a Bill is brought for Wharfage, &c. and Defendant admits Plaintiff's Right, but sets up an Exemption for a particular Place, the Court will not dismiss the Bill, but will give Leave to bring an Action at Law. *Town of Poole* v. *Bennet*, *T.* 1729. *Bunb.* 270.]

[Bill for Discovery and Relief against Defendants, who broke into Intestate's Room, and took away Money, Bonds, &c. does not lie, if Defendants deny the Equity. *Kerslake* v. *Pannel*, *T.* 1730. *Bunb.* 287.]

[A single Copyholder is not relievable in Equity against an excessive Fine; but several Copyholders are against a general Fine. *Cowper* v. *Clark*, *M.* 1732. 3 *P. W.* 155.]

[Disputes between Masters and Apprentices are no Foundation for coming into Equity. *Argles* v. *Heaseman*, *M.* 1739. 1 *Atkyns* 518.]

[This Court cannot set aside a Will for Fraud, but only direct an Issue *devisavit vel non*; for a Will of Personal Estate may be set aside in the Ecclesiastical Court for Fraud, and of Real Estate at Law. *Powis* v. *Andrews*, *H.* 1723. *Bennet* v. *Vade*, *T.* 1742. 2 *Atkyns* 324.]

[A Person claiming Lands under Marriage Articles and Settlement, which he has in his Custody, and where no Terms are standing out, must establish his Title at Law before he can come into this Court for Deeds and Writings. *Warrick* v. *Warrick*, *H.* 1745. 3 *Atkyns* 291.]

[If Plaintiff comes properly into this Court, (as for Discovery of Deeds, and to have them produced, or for an Account of Rents and Profits,) it will determine a Matter of Law. *Ld. Townshend* v. *Windham Ash*, *P.* 1745. 3 *Atkyns* 336.]

[A Bill for an Account and Share of Prize-Money does not lie against the Representative of an Admiral; the Remedy is at Law against the Agents for Captures. *Ogle* v. *Representatives of Haddock*, *M.* 1748. 1 *Vezey* 161.]

[If *A.* loses *B.* a Banker's Notes, payable to him or Bearer, and *B.* offers to pay the Money, on the usual Security to indemnify; *A.* dies without doing it, and his Representative, seven Years after, brings Bill for Payment, but there is no Affidavit of the Loss, nor Offer of Indemnity; this Court will not relieve, but leave him to Action at Law. *Whalmsley* v. *Child*, *M.* 1749. 1 *Vezey* 341.]

[If there is a List of Bank-notes in a Testator's Writing, some marked paid, others unpaid, and these have not appeared in many Years, and are supposed to be lost, and the Executor swears he believes Testator had lost them, and offers to give Security, yet the Court will not order Payment; for the Testator's Hand is no Evidence here more than at Law, therefore the same Remedy at Law. *Glynn* v. *Bank of England*, *M.* 1750. 2 *Vezey* 38.]

[A Creditor

[A Creditor by *Elegit* executed may have Relief againſt a fraudulent Conveyance, tho' he might have Relief at Law. *Bennet* v. *Muſgrave*, *M.* 1750. 2 *Vezey* 51.]

[If the precedent Conveyance is only voluntary, without other Fraud, ſubſequent Purchaſer for valuable Conſideration ſhall be left to his Remedy at Law. *Ibid.*]

[If *A.* treats with *B.* for the Loan of Money, *A.* dies abroad, which *B.* not knowing pays it to *C.* his Agent, who remits it in Bullion, *A.*'s Executors receive it, and remit it back to *England* to the Executors of *A.*'s Father; *B.* cannot have Relief againſt them, but muſt try it at Law againſt *C.* or the Executors of *A.* abroad. *Eyre* v. *Eyre*, *M.* 1750. 2 *Vezey* 86.]

Nor will it give Relief in Execution of a Sentence of an Eccleſiaſtical Judge; as for the quieting of the Poſſeſſion of a Pew in the Church, after a Decree for it by the Ordinary. 2 *Ver.* 226.

[If *Spoliation* or Suppreſſion of a Will is clear, the Court will give Relief without making the Plaintiff cite the Defendant in the Spiritual Court, or directing an Iſſue at Law. *Tucker* v. *Phipps*, *T.* 1746. 3 *Atkyns* 359.]

Nor, againſt Churchwardens, to enforce the ſigning of a Rate to reimburſe what the Party had expended by Order of Veſtry, after they are out of their Office. 2 *Ver.* 262.

[The Court will not receive a Suit relating to Church Rates, for the Eccleſiaſtical Courts have Juriſdiction; unleſs Preſcription is alledged. *Anon.* *T.* 1752. 2 *Vezey* 451.]

But where a Man has Privilege in the Court, he may ſue there for a Matter for which he has an Action at Law: As, a Solicitor may have a Bill for Fees in a Suit in *Chancery*. 1 *Ver.* 203.

Yet to ſuch a Bill a Plea, good at Law ſhall be allowed; as, that he did not deliver a Bill ſigned purſuant to the *St.* 3 *Jac.* 6. 1 *Ver.* 312.

(3 G) Executor.

(3 G. 1.) Stands in the Place of the Teſtator.

CHANCERY will decree an Intereſt veſted in the Teſtator to his Executor, tho' he is not named; as, if a Legacy is given to *A.* and if he dies under Age, to *B.* and *C.* or the Survivor; *B.* and *C.* die, and then *A.* dies under Age; the Legacy ſhall be decreed to the Executor of the Survivor. *R.* 2 *Vent.* 347.

If a Bond is upon Condition to pay Money to *A.* upon ſuch a Day, and he dies before the Day; it ſhall be paid to his Executor, or Adminiſtrator. 3 *Leo.* 212.

If an Executor makes a Leaſe, rendring Rent, his Adminiſtrator ſhall have the Rent, and not the Adminiſtrator *de bonis*, *&c.* 1 *Ver.* 94.

If a Bond is given to pay a Sum of Money, for Owelty of Partition, to the other Parcener; the Executor or Adminiſtrator of the Obligee ſhall have it, and not the Heir. 1 *Ver.* 133.

If Money is paid to the Remembrancer in the *Exchequer*, who imbezils it, a Bill lies for Relief, by his Succeſſor againſt his Executor. *Ca. Ch.* 300.

If Goods are deviſed to be ſold for the Purchaſe of Lands for *A.* who dies without Iſſue before the Purchaſe made; the Executor of *A.* ſhall have them. 1 *Ch. R.* 204.

If a Term is veſted in Truſtees for Payment of 1000 *l.* to *A.* his eldeſt Son, and every other Child not married or provided for; *A.* was then married and had 40 *l.* *per Ann.* for the Life of his Father, but no other Proviſion, and died before his Father; the Executor of *A.* ſhall have the 1000 *l.* 1 *Ch. R.* 258.

But, if upon an Aſſignment of a Statute to the Conuſor by the Adminiſtrator *de bonis non* of the Conuſee, the Conuſor covenants to pay the Money to him, his Executorsor Adminiſtrators, and the Adminiſtrator dies; the Money ſhall be decreed to the Executor of the Adminiſtrator, and not to a new Adminiſtrator *de bonis non*, *&c.* no Debts of the firſt Inteſtate appearing to be due. 2 *Vent.* 362.

So, if a Man is bound to pay Money to ſuch Perſon as *A.* by Will ſhall nominate, who does not nominate, but makes *B.* his Executor; *B.* ſhall not

have the Money; for it ought to be an Aſſignee in Fact that ſhall take. *R. Hob.* 9.

(3 G 2.) What Things he is compellable to do in Equity.

An Executor is compellable in *Chancery* to pay Legacies. *Vide Poſt.* (3 Y. 3.) *P. W.* 575.

[If *A.* puts his Will in his Nephew *B.*'s Hands, his Executor and reſiduary Legatee, with Intention to reconſider it, which he does before a Witneſs; his Nephew *C.* reminds him of 100*l.* he intends to leave him, *A.* allows it, deſires *B.* to pay it, who promiſes it, and offers his Bond or Note for it; and again after *A.*'s Death promiſes to pay it; *B.* ſhall be decreed to pay it, not perſonally, but out of Aſſets, and a Debt due from *A.* to *C.* ſhall be deducted, being deemed ſatisfied by Implication. *Reech* v. *Kennegal, M.* 1748. 1 *Vezey* 123. 1 *Wilſ.* 227.]

[If an Executor pays all Legacies but one, and never exhibits an Inventory, his Repreſentative, admitting Aſſets of him, ſhall pay that Legacy. *Orr* v. *Kaines, H.* 1750. 2 *Vezey* 193.]

If he is guilty of a *Devaſtavit*, his Executor or Adminiſtrator ſhall be liable (if he has Aſſets) to the Debts of the firſt Teſtator, to the *Quantum* of the Goods waſted. *Ca. Ch.* 257.

If any one adminiſters, without Authority, the Executor ſhall be compelled to allow all Payments, to which he himſelf would have been liable. *R. Ca. Ch.* 33.

A fortiori ſuch Payments ſhall be allowed to an Executor *de ſon tort*. *Ca. Ch.* 33.

If Money is to remain in the Hands of an Executor, till Payment to Infants, when of full Age; *Chancery* will compel him to give Security for it.

And to pay Intereſt. 2 *Ca. Ch.* 152. *Vide Poſt,* (3 S. 4, 5.)

[If a Term for Years and Perſonal Eſtate is deviſed to *A.* an Infant, and if he dies, and his Mother has no Children, to *B.* and *A.* dies; tho' the Mother is living, and may have a Child, yet the Court will direct an Account and Diſcovery of the Eſtate, to ſecure it to *B.* in caſe the Contingency happens. *Studholme* v. *Hodgſon, T.* 1734. 3 *P. W.* 300.]

[If one charges the Reſidue of his Perſonal Eſtate with an Annuity to his Wife, payable quarterly, the Court will order the Executor to bring Securities before the Maſter, to be ſet apart to anſwer it, tho' uſually when the Will does not require Security, neither does the Court. *Slanning* v. *Styles, M.* 1734. 3 *P. W.* 334.]

[The Court will not take the Aſſets out of the Hands of an Executor by appointing a Receiver, becauſe the Executor is poor, if no Appearance of Fraud. *Hathornthwaite* v. *Ruſſel, H.* 1740. 2 *Atkyns* 126.]

[But if the Executrix is a *Feme-covert*, whoſe Huſband was in *England* at the making of the Will, but at Teſtator's Death in the *Weſt-Indies*, and in bad Circumſtances, the Court will appoint a Receiver. *Taylor* v. *Allen, M.* 1741. 2 *Atkyns* 213.]

[If there has been a Verdict at Common Law againſt a Will, on Account of the Teſtator's Inſanity, and the Executor inſiſts, that ſuch Verdict affecting the Real Eſtate only, he may ſtill ſupport the Will in the Eccleſiaſtical Court, and gather Teſtator's Aſſets; this Court will order the Executor to pay in what he has received to the Bank, to the Account of the Accountant-general, and will appoint a Receiver to pay into the Bank with Accountant-general's Privity, whilſt the Validity of the Will is conteſting in the Commons. *Montgomery* v. *Clark, M.* 1742. 2 *Atkyns* 378.]

[If *A.* is intitled by Covenant of *B.* to 2000*l.* after the Death of *B.*'s Widow and Executrix, who has an Intereſt for Life in the Fund out of which it is to come, ſhe ſhall be obliged to ſet apart the Fund in her Life-time. *Johnſon* v. *Mills, T.* 1749. 1 *Vezey* 282.]

[On a Bill by Heir at Law to contravert a Will of Real Eſtate, the Court will not appoint a Receiver, becauſe there is a Diſpute in the Eccleſiaſtical Court concerning the Probate. *Knight* v. *Dupleſſis, M.* 1749. 1 *Vezey* 324.]

So, if he receives Money put out upon Mortgage; he ſhall be compelled to place it out at Intereſt. 2 *Ca. Ch.* 21.

So, if he compels Payment, and places the Money out at Intereſt; he ſhall account for the Intereſt, tho' he takes the Security at his Peril. *R. cont.* 2 *Ca. Ch.* 21. *R. Acc.* 2 *Ca. Ch.* 152.

Otherwiſe, where he is compelled to receive it. 2 *Ca. Ch.* 21.

[If an Executor admits Aſſets, the Decree ſhall be Perſonal againſt him; if the Fund has been out at Intereſt, for Intereſt alſo; and if he has miſbehaved (as if he has obtained a Releaſe without a Conſideration) for Coſts alſo. *Horſley* v. *Chaloner*, *M.* 1750. 2 *Vezey* 83.]

[Unleſs he makes a Caſe to the contrary; as that a Banker, in whoſe Hands the Money was, broke. *Ibid.*]

So, if a Tertenant ſuffers a Rent-charge to be in Arrear, his Executor ſhall be compelled to the Payment of the Arrears if he has Aſſets; for tho' the Perſon of the Teſtator was not liable for a Rent, which was recoverable only by Diſtreſs, yet his Perſonal Eſtate was augmented by the Non-payment. *R. Ca. Ch.* 121.

If an Executor is indebted to the Teſtator, tho' the Debt is releaſed by Law, Equity will inforce Payment by the Executor, for the Diſcharge of Debts, or Legacies.

So it will inforce Payment to the Reſiduary Legatee. *R. Ca. Ch.* 292.

So it will inforce Payment of Debts on ſimple Contract, if the Executor has Aſſets, tho' the Executor is not liable by Common Law. *R. Mo.* 556.

[If *A.* gives Bond to *B.* for Payment of Money at her Death in Nature of a legatary Diſpoſition, and dies, and *B.* obtains Judgment againſt *A.*'s Executor *C.* who pleaded *Non eſt factum*; *C.* ſhall pay Principal and Intereſt, whether he had Aſſets or not, as if he had confeſſed Judgment, or let it go by Default. *Ramſden* v. *Jackſon*, *H.* 1737. 1 *Atkyns* 292.]

[A voluntary Bond ſhall be poſtponed in Equity to ſimple Contract Debts. *Ib.*]

[If a Bond is claimed in Conſideration of Money lent, and the Obligee fails in proving the Conſideration, he ſhall not afterwards ſet it up as a voluntary Bond. *Ibid.*]

[An Executor is not compellable in Equity nor Law to take Advantage of the Statute of Limitations againſt an otherwiſe juſt Demand. *Norton* v. *Frecker*, *H.* 1737. 1 *Atkyns* 524.]

[If there has been no Demand for the Arrears of an Annuity left by Will for Twenty-two Years after the Annuitant's Death, the Court will not compel the Executor to pay them; the Statute of Limitations holds as to an Annuity, tho' not as to a Legacy. *Smallman* v. *Hamilton*, *M.* 1740. 2 *Atkyns* 71.]

[If a Creditor brings Bill, obtains a final Decree, Maſter's Report confirmed, and then another Creditor does the ſame, the Executor ought to have paid firſt him who uſed the firſt Diligence, as at Law the Creditor who obtains the firſt Judgment ſhall be preferred; but as to Legacies it is otherwiſe, for they ſhall be paid *pari paſſu*; for there is no Priority in them. *Aſhley* v. *Pocock*, *M.* 1744. 3 *Atkyns* 208.]

[Payment of Intereſt on a Legacy, from Time to Time, ſhall be Evidence of Aſſets; thus, if a Man leaves 500*l.* the Intereſt to be paid to five Perſons for Twenty-one Years, if they ſo long live, and then to a Charity, and the Executors pay the Intereſt, and the Huſband of one of them pays her Proportion of it after her Death, and they exhibit no Inventory, the Huſband and the other Executor ſhall pay the 500*l.* *Corporation of Clergymen's Sons* v. *Swainſon*, *H.* 1747. 1 *Vezey* 75.]

So, if an Executor joins in the Probate of a Will, and afterwards the other Executor only acts; he ſhall be aided in Equity againſt a Sentence in the Eccleſiaſtical Court, which charges both for the Payment of a Legacy. *Semb. Ca. Ch.* 200.

[But a Joint Executor and reſiduary Legatee ſhall make good a Legacy out of his Moiety of the Surplus, tho' he had left the Money in the Hands of the other Executor and reſiduary Legatee from whom the Legatee had received Intereſt before his Bankruptcy, and a Dividend out of his Eſtate afterwards. *Spendlove* v. *Aldrich*, *M.* 1 *G.* 2. *Ld. Raym.* 1320.]

[An Executor who is a Bond-creditor is not obliged to diſcharge his Bond piecemeal as Aſſets come in, and he may diſcharge all other Demands on Teſtator before his own; therefore he ſhall be allowed Intereſt, till it appears he had ſufficient in his Hands to diſcharge his Bond entirely, over and above all other Demands. *Robinſon* v. *Cumming*, *T.* 1742. 2 *Atkyns* 409.]

[If Executors have obtained Probate of Will, by Conſent of the next of Kin by impoſing on him, and the Will is found forged by Verdict, this Court will order the Executors to ſtand as Truſtees for him. *Barneſley* v. *Powel*, *T.* 1749. 1 *Vezey* 284.]

[But if there appears a prior Will, the Court will order the Executor to conſent to a Revocation of the Probate, that then the other may be propounded, and if that is not done, they ſhall conſent to Adminiſtration being granted to next of Kin. *Ibid.*]

[And, in the mean time, will order an Account of the Perſonal Eſtate, and that it be paid into the Bank, for the Benefit of thoſe intitled. *Ibid.*]

[If *A.* ſettles a Plantation in *America* to Truſtees, to the Uſe of two *Mulattos*, his natural Children, their Heirs, *&c.* they paying to another *Mulatto* 500*l.* with a Clauſe obliging himſelf, his Heirs, Executors, *&c.* to warrant ſaid Plantation, and the Stock thereon; and afterwards Ejectment is brought againſt him for the Plantation, which he defends, but is evicted, and then brings Ejectment in his own Name, but compromiſes, and conveys for 1000*l.* which he receives, and continues to manage the Whole as his own; and after his Death Bill is brought againſt his Executor for Satisfaction out of Aſſets, not following the Subject itſelf, Plaintiff ſhall have Satisfaction for the Value of the Plantation as it ſtood at the Time of Sale, and the Stock as it ſtood at the Death of *A.* according to the Value at the Time of Eviction, and *Engliſh* Intereſt on it from his Death. *Williamſon* v. *Codrington*, *T.* 1750. 1 *Vezey* 511.]

(3 G. 3.) How he ſhall pay Legacies.

(3 G. 3.) When a Legatee ſhall refund, and when not.

An Executor need not pay a Legatee, without Security to refund, if the Aſſets fail. *Ca. Ch.* 257, 137.

And he ſhall refund to Creditors and alſo to other Legatees; for if the Aſſets fail, the Legacies ſhall be paid in Proportion. 2 *Vent.* 358, 360. 1 *Ver.* 94. 1 *Ch. R.* 134. 2 *Ver.* 205. 2 *Ch. R.* 137.

And if the Spiritual Court decrees Payment, without Security for refunding, a Prohibition ſhall go. 2 *Vent.* 358. *Ca. Ch.* 258. 1 *Ver.* 93.

So, if by a Decree of *Chancery*, a Legatee is paid, and afterwards Debts are diſcovered, he ſhall be compelled to refund. 2 *Vent.* 358. *R. Ca. Ch.* 136. 2 *Ver.* 205. *Vide* 2 *Ch. R.* 137.

So, if the Executor of an Executor, who has made a *Devaſtavit*, pays a Legacy of his Teſtator, and then, upon an Account, the firſt Executor appears to have waſted the Goods of the firſt Teſtator; the Legatee ſhall be compelled to refund to a Creditor of the firſt Teſtator, upon a Bill againſt the Executor of the Executor (who was inſolvent) and the Legatee. *R.* 2 *Vent.* 360. 1 *Ver.* 162.

Otherwiſe, if the Bill was brought by the Creditor and the Executor of the Executor againſt the Legatee; for the Executor ſhall not reverſe his own Aſſent. *R.* 2 *Vent.* 360.

But if an Executor aſſents to a Legacy, without requiring Security to refund, if Debts are afterwards diſcovered, and the Aſſets fail, he ſhall not compel the Legatee to refund. *R.* 1 *Ver.* 94, 453, 460. 2 *Vent.* 358, 360. *R. Cont. Ca. Ch.* 257, 136.

So, if he pays a Debt due by ſimple Contract, before a Debt by Specialty; the Creditor ſhall not be compelled to refund. 2 *Vent.* 360.

So, if an Executor aſſents to a Deviſe of a Term for Years, and the Deviſee ſells it *bonâ fide*; the Creditors cannot compel the Vendee to refund. *R. Ca. Ch.* 257.

So, if an Executor pays a Legacy, and afterwards Aſſets fall ſhort for the other Legatees; the firſt Legatee ſhall not be compelled to refund. *Semb. Ca. Ch.* 136. 2 *Ver.* 205.

[If

[If an Executor pays a Legacy voluntarily, he is presumed to have sufficient to pay all, and shall not oblige the Legatee to refund; but if Executor proves insolvent, the other Legatees may compel the one paid to refund. *Orr* v. *Kaines*, *H.* 1750. 2 *Vezey* 193.]

[Residuary Legatee paid by Executor without Fraud, shall not be obliged to refund to Legatees who were to be paid at a future Time. *Moore* v. *Moore*, *T.* 1755. 2 *Vezey* 596.]

A specific Legacy, or Sum, actually paid, shall be refunded as well as another. *Ca. Ch.* 257.

So, if a Devise is that the Executor do assign Land of 100 *l.* Value to *A.* and gives Legacies out of Lands sold to others; and Land of above 100 *l.* Value is assigned to *A.* by reason of which the Assets fall short for the other Legatees; *A.* must refund. *R.* 2 *Ca. Ch.* 25.

When Legatees abate, *Vide Post*, (3 Y. 18, 19.)

[If Testator leaves large Sums in Legacies, and directs his Corpse to be buried at a Distance, the Court will not adhere to the Law Rule of allowing but 10 *l.* for Funeral Charges. *Stag* v. *Punter*, *T.* 1744. 3 *Atkyns* 11 [9.

(3 G. 4.) What is an Assent to a Legacy. *Vide Administration*, (C.) 5, &c.

[Neither residuary nor specific Legatees have any Interest without the Assent of the Executor, till then he has the Interest in him, and not a bare Authority only. *Mead* v. *E. Orrery*, *T.* 1745. 3 *Atkyns* 235.]

[If a Term is devised to *A.* for Life, Remainder to *B.* and the Executor assents to the Devise to *A.* it is an Assent to the Devise over. *Adams* v. *Pierce*, *T.* 1724. 3 *P. W.* 11.]

If the Executor demises a Term in Trust for a Legatee, this shall be a sufficient Assent. *R.* 2 *Vent.* 358. 1 *Ver.* 94, 453.

If an Executor refuses to assent, he shall be compelled thereto in Equity. 1 *Ver.* 94.

(3 G 5.) When he shall take as a Legatee.

If an Executor is Residuary Legatee, and dies before Election made to take as Legatee, yet the Residue shall be distributed as his own Estate; for the Court will make the Election for him. *R. Ca. Ch.* 310.

But if a Man devises his Personal Estate to his Wife, and makes her Executrix, she shall take as Executrix. *R.* 2 *Ver.* 302, 309.

Vide Post, (3 G. 7.)

(3 G. 6.) What Payment will be safe. By Direction of the Court.

The most safe Way for Payment of Legacies, by an Executor, is to take the Direction of the Court of *Chancery*.

If an Executor pays a Legacy without the Direction of the Court, and afterwards Assets are evicted; he shall not be relieved against the Legatee, nor compel him to refund. *R.* 2 *Ca. Ch.* 9. *Vide Ante*, (3 G. 1.)

So, if Assets afterwards fail to answer all the other Legacies fully, he shall answer out of his own Money, so much as the first Legatee is paid beyond his Proportion. *R.* 2 *Ca. Ch.* 132.

Tho' that Legatee was to be paid in the first Place. *Semb.* 2 *Ca. Ch.* 132.

So an Executor may exhibit a Bill against all the Creditors, to settle their Debts, and which of them are to be preferred. *R. upon Demurrer*, 2 *Ver.* 37.

But Payment to the Father of an Infant, where the Legacy is not of Value to support the Charge of a Decree, shall be good, tho' the Father afterwards fails. *Ca. Ch.* 245.

A fortiori, if he takes Security from the Father to pay the Infant. *Ibid.*

Otherwise, if he takes Security for his Indemnity; for then he pays at his Peril. *Ibid.*

[If an Executor pays a considerable Legacy (as 100 *l.*) into the Hands of an Infant, he shall not be allowed it; if it is a very small one, he may. *Philips* v. *Paget*, *M.* 1740. 2 *Atkyns* 81.]

So Payment of a Legacy, where each Legatee ought to be paid out of a proper Fund, is good; tho' the Fund of others afterwards fails; for each ſhall ſuſtain the Loſs, which happens to his particular Fund. 2 *Ca. Ch.* 132.

(3 G. 7.) When he ſhall be a Reſiduary Legatee.

If a Man makes his Executor, and ſays nothing as to the Reſidue of his Perſonal Eſtate; it goes to his Executor. *R.* 2 *Ver.* 104. *R. Eq. Ca.* 28.* *Admitted* 1 *P. W.* 554.

So, if a Man gives a Legacy to his Executor, without Mention that another ſhall have the Reſidue; his Executor ſhall have it. *R.* 2 *Ver.* 677, 8. *R.* 2 *Ver.* 737.—*Cont.* 2 *Ver.* 361, 425. *R. Eq. Ca.* 12.* *Cont. Pr. Ch.* 170.

* 2d Part of 2 *Mod. Ca.*

[If Teſtator makes his Wife ſole Heireſs and Executrix of all his Real and Perſonal Eſtate, to ſell and diſpoſe thereof at her Pleaſure, and to pay his Debts and Legacies, and gives his Heir at Law 5*l.* the Wife has the Reſidue to her own Uſe, and there is no reſulting Truſt to the Heir. *Rogers* v. *Rogers*, *T.* 1733. 3 *P. W.* 193. *C. T. T.* 268.]

* 2d Part of 2 *Mod. Ca.*

[If *A.* gives Legacies to her Children, and then directs 1000*l.* of her Partnerſhip Stock to be ſtrictly ſettled on her Son, and gives the Reſidue of Partnerſhip Stock to Truſtees, for the ſeparate Uſe of *B.* a *Feme-covert*, and makes her Executrix, but makes no Diſpoſition of the Surplus, *B.* ſhall have it. *Newſtead* v. *Johnſton*, *T.* 1740. 2 *Atkyns* 45.]

[Tho' Executors have Legacies one 200*l.* the other 100*l.* yet if it is proved that Teſtator always declared that he would not leave any Thing to next of Kin, the Executors ſhall have the Reſidue. *Braſbridge* v. *Woodroffe*, *M.* 1740. 2 *Atkyns* 68.]

[A Legacy to an Executor for Mourning for himſelf, Wife, and Children, does not exclude him from the Reſidue, eſpecially if there are two. *Buffar* v. *Bradford*, *M.* 1741. 2 *Atkyns* 220.]

[If *A.* by Will gives *B.* and *C.* Infants, particular ſpecific Legacies by Name, and makes them joint and ſole Executors, they ſhall have the Surplus; for the ſpecific Legacies might be intended for an Inequality of Diviſion among them, and alſo to give each a diſtinct Intereſt, not liable to Survivorſhip. *Blinkhorn* v. *Feaſt*, *M.* 1750. 2 *Vezey* 27. 1 *Wilſ.* 285.]

[If a Man makes his Wife and *A.* Executors, gives his Wife ſpecific Legacies, and makes her reſiduary Legatee, and to *A.*'s Wife gives a Real Eſtate in Fee, and Teſtator's Wife dies in his Life-time, the Reſidue goes to *A.* ſurviving Co-executor. *Wilſon* v. *Ivat*, *H.* 1750. 2 *Vezey* 166.]

[Wife Executrix, tho' Teſtator deviſes to her Money and Land, yet on Parol Proof of his great Affection to her, and his Intention, may have the Reſidue. *Lake* v. *Lake*, *M.* 25 *G.* 2. 1 *Wilſ.* 313.]

Tho' he deviſes a Legacy to his Executor after all other Legacies. *R.* 2 *Ca. Ch.* 187.

Tho' the Executor is his Wife, or other Relation. 2 *Ver.* 649, 678.

[If a Huſband is left ſole Executor, he is intitled to the Surplus. *Partridge* v. *Pawlet*, *H.* 1736. 1 *Atkyns* 467.]

But a Legacy given to the Executor for his Care or Trouble, excludes the Executor, unleſs he be expreſsly named Reſiduary Legatee, from the Reſidue of the Perſonal Eſtate, after Debts and other Legacies paid; for in ſuch Caſe the Reſidue ſhall be diſtributed according to the *St.* 22 & 23 *Car.* 2. *for the Diſtribution of Inteſtates Eſtates*. *R.* 1 *Ver.* 473. *R.* 2 *Ver.* 674. *Adm.* 2 *Ver.* 677. 2 *Ver.* 737. *R. Eq. Ca.* 10.* *R.* 1 *P. W.* 9, 550. *Eq. Ca.* 209.

* 2d Part of 2 *Mod. Ca.*

[If Teſtator gives his Executor 5*l.* for his Trouble, the Surplus ſhall be diſtributed. *Ruſhdell* v. *Carneſſe*, *T.* 9 *G.* *Str.* 568.]

[If Teſtator gives Executor a Legacy for his Trouble, and alſo an expreſs Legacy to the next of Kin, yet the Surplus ſhall go according to Statute of Diſtributions. *Davers* v. *Dewes*, *T.* 1730. 3 *P. W.* 40.]

[Where Executors are made Truſtees, they can take Nothing for their own Benefit, unleſs particularly given them; and having no Ownerſhip, cannot alter the Intereſt of the *Ceſtuique Truſts*. *Reed* v. *Snell*, *T.* 1743. 2 *Atkyns* 642.]

[If a Man gives an Annuity to his Executor, the firſt Payment to be made the firſt Quarter-day after Teſtator's Death, whether that will exclude him from the Surplus? *Dub.* *Southcot* v. *Watſon*, *T.* 1745. 3 *Atkyns* 226.]

But

[But if he gives him an Annuity, and then all his Houſhold Goods and Furniture (three Pictures excepted) and all his Plate, Linen, Watches, Jewels, and Clothes whatſoever, this excludes him from the Reſidue. *Dub. Southcot* v. *Watſon*, *T.* 1745. 3 *Atkyns* 226.]

[Where a neceſſary Implication, or violent Preſumption appears, that Teſtator by naming Executor meant only to give the Office of Executor, and not the beneficial Intereſt or Property, he ſhall be conſidered as a Truſtee, and a reſulting Truſt for the next of Kin to Teſtator. *Biſhop Cloyne* v. *Young*, *M.* 1750. 2 *Vezey* 91.]

[So if *A.* makes *B.* and *C.* his Executors, and as to his Perſonal Eſtate, *&c.* gives *B.* a Mortgage on *B.*'s Eſtate, to be divided among his Children, and gives *C.* a Bond due from *B.* and then gives the Reſidue to ———, the next of Kin ſhall have it. *Ibid.*]

[If a Man gives 1*s.* apiece to his Brother and Siſter, and 50*l.* apiece to his Executors; this Deviſe of 1*s.* ſhall not prevent their having the Reſidue as next of Kin. *Andrew* v. *Clark*, *H.* 1750. 2 *Vezey* 162.]

So, if a Man deviſes the Reſt of his Goods and Chattels to his Executor, and gives him 100*l.* for his Care, and then ſays, *the Reſt of my Perſonal Eſtate to A.* *A.* ſhall be the Reſiduary Legatee of the Goods, as well as of the other Perſonal Eſtate. *R.* 1 *Ver.* 30.

So, if the Executor ſubmits to account for the Reſidue, having his Legacy, tho' it was by Surprize. 1 *P. W.* 298, 300.

If a Man deviſes 800*l.* to his Executor upon Truſt to pay ſeveral Annuities, the Reſidue of his Perſonal Eſtate to *A.*; the Surplus of the 800*l.* after the Annuities ſatisfied, ſhall go to *A.* 1 *Ver.* 425, 6.

If a Man deviſes 20*l.* to his Executor, and deſires him to take the Trouble of his Will, and gives all that he has in Legacies, but afterwards acquires a larger Perſonal Eſtate; the Surplus ſhall be in Truſt for the Legatees in Proportion. *R.* 2 *Ver.* 149.

If a Man deviſes his Plate to his Wife for Life, and afterwards to his Son, and makes his Wife Executrix, but ſays nothing of the Reſidue; it ſhall be diſtributed. *R.* 2 *Ver.* 650. *R.* 2 *Ver.* 674. *R. Cont.* 2 *Ver.* 677. *Vide infra.*

[If Teſtator after ſeveral Legacies deviſes the Reſidue to his Wife for Life, and ſhe deviſes to *A.* the Reſidue of the Huſband's Perſonal Eſtate ſhall be diſtributed. *Joſlyn* v. *Brewett*, *T.* 1722. *Bunb.* 112.]

So an abſolute Legacy, if it lapſes by the Death of the Legatee, ſhall not go to the Reſiduary Legatee, but ſhall be diſtributed. 2 *Ver.* 395. Or it goes to the Executor, where the Benefit of the Whole was given to him for his Life. *Temp.* 5 *G.* 2. 12.

[If a Man by a *French* Will inſtitutes for his *univerſal Heireſſes* his Siſter *A.* for one Third, his Siſter *B.* for one Third, and as to the other Third, the Profits to *A.* for Life, and then to the Children of his Brother *C.* and makes *D.* Executor; *A.* dies in Teſtator's Life, her Third does not go to the Executor, but ſhall be divided in Thirds between *B.* and *F.* Teſtator's Siſters, and the Son of *C.* *Androvin* v. *Poilblanc*, *H.* 1745. 3 *Atkyns* 299.]

If a Man gives a Legacy to *A.* and another to his Executor, and dies before he deviſes over; the Reſidue of the Perſonal Eſtate ſhall be diſtributed. *R. Eq. Ca.* 184.

[If *A.* deviſes her worldly Subſtance to *B.* to be paid at Twenty-one or Marriage, if ſhe marries with Conſent, or if ſhe dies before, then to ——, and makes *C.* Executor, heartily requeſting him to be ſo kind as to take the Execution, and *B.* dies under Age and unmarried, the next of Kin ſhall have it. *Lord North* v. *Purdon*, *T.* 1752. 2 *Vezey* 495.]

The Reſiduary Legatee may demand an Account againſt the Executor. 2 *Ca. Ch.* 35.

So, againſt every one to whom Money of the Teſtator is payable. 2 *Ca. Ch.* 57. *Vide Ante*, (2 A. 1.)

And the Executor ſhall account for all Intereſt received by him, as well as the Principal, to the Reſiduary Legatee. *R. Cont.* 2 *Ca. Ch.* 35.

If an Executor compounds a Debt or Mortgage, the Advantage tends to the Benefit of the Reſiduary Legatee, and not of himſelf. *R.* 1 *Sal.* 155.

If a Legacy is given to *A.* upon the Contingency of his returning from *France, &c.* and he dies before; it will go to the Reſiduary Legatee, the Condition precedent, upon which it is given, not being performed. *R.* 2 *Ver.* 394.

If a Man deviſes the Uſe of his Plate to his Wife for Life and makes her Executrix; ſhe ſhall have the Reſidue. *Cont. per Cowper, but reverſed in the Houſe of Lords,* 1 *P. W.* 115. 2 *Ver.* 648, 675. 1 *P. W.* 552. *Vide ſupra.*

[If a Man makes his Will in *French*, of all his Eſtate, and ſays, "My Daughter "*M.* is very ill; if ſhe dies, I leave my Wife the Revenue; if ſhe lives, her "Dower only; I give my Daughter *M.* the Reſidue;" then, if ſhe dies without *Enfans*, gives pecuniary Legacies; and concludes, "to my Brother *ce que ſe trouvera*;" and *M.* ſurvives Teſtator, but dies of that Illneſs, (a Cancer,) without Iſſue; *Enfans* ſignifies Children, and not Iſſue, therefore the Wife has the *uſufructuary* Intereſt for Life, and *ce que ſe trouvera* is a ſufficient reſiduary Bequeſt to the Brother. *Duhamel* v. *Ardovin, H.* 1750. 2 *Vezey* 162.]

(3 G. 8.) What Relief an Executor ſhall have in Equity.

Vide Adminiſtrator, Ante, (2 B. 1, 2.)--*Deviſe, Ante,* (3 A. 1, *&c.*)

An Executor ſhall be relieved in Equity.

To a Bill brought by an Adminiſtrator, it may be pleaded, *that the Deceaſed made a Will and the Defendant his Executor.* 1 *Ver.* 397.

That the Defendant is Executor by a Nuncupative Will made beyond the Sea, and no Aſſets here, tho' the Nuncupative Will is not proved here for there is no need of it, when made in a foreign Country, of an Eſtate there. *R.* 1 *Ver.* 397.

That the Plaintiff is not Adminiſtrator. 1 *Ver.* 473.

So, if *A.* being ſued as Executor, pleads *Ne unques Executor*, and there is a Verdict againſt him, becauſe ſome minute Thing as 2 *d.* or other ſmall Sum was paid to him, and a ſmall Part of the Goods of the Teſtator delivered to him; he ſhall be relieved in Equity. *R.* 2 *Ver.* 147, 8.

So, if a Verdict be againſt him upon *Plene Adminiſtravit*, upon a Confeſſion by him, that he had a Mortgage for 300 *l.* when that Mortgage was of no Value, there being two prior Mortgages. *R.* 2 *Ver.* 147.

So, if an Executor pays Money purſuant to a Decree, and afterwards is charged with that Money as Aſſets at Law, he ſhall be aided in Equity; for the Decree was not pleadable at Law. 3 *Ch. R.* 3.

[If an Executor or Adminiſtrator with his own Money pays Judgments beyond the perſonal Aſſets, it ſhall be allowed him out of the Real Aſſets, before other Creditors; but if he pays Bond-Debts beyond Perſonal Aſſets, he muſt come in *pro rata* with other Bond-Creditors for Satisfaction out of the Real Aſſets. *Robinſon* v. *Tonge, M.* 1735. 3 *P. W.* 398.]

So, if *A.* covenants, upon the Sale of Land to *B.* that he ſhall enjoy, or the Money paid ſhall be refunded, and *B.* is afterwards evicted by *C.* and afterwards *B.* makes *C.* his Executor; *C.* ſhall be aided in Equity to recover the Money, tho' he himſelf has the Eſtate; for he has it *en auter Droit.* *R.* 1 *Ver.* 284.

If *A.* covenants, within four Months to ſettle 100 *l. per Ann.* or, if he does not do it, that his Executor ſhall pay 2000 *l.* and dies within four Months, his Executor ſhall have his Election to ſettle the Land, or pay the Money. *R.* 2 *P. W.* (617.)

[If *A.* dies Inteſtate, and his Wife poſſeſſes herſelf of all his Perſonal Eſtate, and the Son acquieſces for many Years, and accepts a Legacy under the Mother's Will, he ſhall not afterwards bring a Bill againſt her Executor for an Account of the Father's Perſonal Eſtate. *Huet* v *Fletcher, M.* 1739. 1 *Atkyns* 467.]

[If one Executor is indebted to the Teſtator on Mortgage, the Co-executors cannot bring a Bill to foreclоſe, but for Sale of the Eſtate. *Lucas* v. *Seale, T.* 1740. 2 *Atkyns* 56.]

[If an Executor, for the Benefit of Teſtator's Eſtate, inveſts Money in the Funds, or transfers from one Stock to another, he is not guilty of a *Devaſtavit*; this is not a Converſion or Appropriation, and you may ſtill follow the Money as if it continued in its firſt Plight. *Waite* v. *Whorwood, P.* 1741. 2 *Atk.* 159.]

[If

[If a Will is controverted in the Commons, and both the next of Kin and the Executor bring Bills, and there is an Order for a Receiver, in purſuance of which the Executor has paid in Notes, and the next of Kin has poſſeſſed himſelf forcibly of Houſes; he ſhall deliver up the Poſſeſſion to the Receiver, on the Executor's ſtaying Proceedings on an Indictment for the forcible Entry. *Wills* v. *Rich*, *H.* 1741. 2 *Atkyns* 285.]

[If an Executor, Adminſtrator, or Truſtee, decreed to account for Aſſets, delivers Goods to his Solicitor, who is robbed; ſuch Executor, *&c.* ſhall not be charged, for he was only to keep them as his own. *Jones* v. *Lewis*, *H.* 1750. 2 *Vezey* 240.]

(3 G. 9.) What not.

But if an Executor or Adminiſtrator pays Debts on Specialties to the Value of the Aſſets, before Notice of a Decree; he ſhall pay the Whole due by the Decree, and ſhall not be aided in Equity. 2 *Ver.* 37.

[If an Executor pays ſimple Contract Debts preferable to a Bond with Notice, he ſhall pay Coſts *de bonis propriis* in Equity as at Law. *Jefferies* v. *Harriſon*, *H.* 1736. 1 *Atkyns* 468]

If he proves the Will in the Spiritual Court, and a Legacy is interlined and forged, he ſhall not be aided in Equity; for it might have been reſerved in the Eccleſiaſtical Court, which has the Probate of Wills, *quoad* the Perſonal Eſtate. *P. W.* 388.

(3 H.) Exchange.

IF a Man incloſes Glebe amongſt other Lands improved out of a Waſte, and allots other Land to the Parſon, as good in Quantity and Quality, and it is ſo found upon a Commiſſion; it ſhall be eſtabliſhed by a Decree. 1 *Ch. R.* 41,

(3 I) Fait.

(3. I. 1.) When a Diſcovery ſhall be inforced.

CHANCERY will compel the Diſcovery of Deeds, or other Writings. *Vide Ante*, (3 B. 1, 2.)

And that, at the Suit of every one, who has a Right to a Deed in the Defendant's Cuſtody; as, if there is a Deviſe to a Wife or Daughter, *&c.* the Heir may pray a Diſcovery of a Deed of Intail, which defeats the Deviſe. 2 *Ca. Ch.* 4.

If a Deed is diſcovered to be in the Hands of *A.* who ſuppreſſes it; there ſhall be a Decree for Enjoyment according to the Deed. 2 *Ver.* 380.

Tho' the Defendant denies the Deed to be in his Cuſtody, if he has confeſſed it in a former Anſwer. 2 *Ver.* 380.

If the Defendant ſays, that, in a Paſſion, he burnt the Deed, but it is proved that he produced it, after the Time alledged for the burning of it; he ſhall ſtand committed till he either produces it, or admits it to be to the Effect in the Bill. *R.* 2 *Ver.* 561.

But a Purchaſer for a valuable Conſideration without Notice, ſhall not be compelled to diſcover a Deed for the Impeachment of his Title, but may plead that he is a Purchaſer without Notice. *Vide Ante*, (I. 1.)

Nor a Woman, who has a Jointure, if the Jointure is not confirmed.

So there ſhall not be a Bill for the Diſcovery of a Deed, without an *Affidavit* that it is loſt; where the Court has not Juriſdiction, without the Deed. *Vide Ante*, (E. 1.)

Or, if the Plaintiff, beſides the Diſcovery, prays Relief. *Eq. Abr.* 13.

But where the Bill is for a Diſcovery only, or to have a Deed produced at a Trial, an *Affidavit* is not neceſſary. *Semb. Eq. Abr.* 13.

Or, if the Bill is for the Diſcovery of a Leaſe, without which the Plaintiff cannot fix his Damages at Law, tho' he prays General Relief; for that does not import

import Relief in Equity, but ſhall be confined to ſuch Relief as was ſought by the Diſcovery, to the Intent to have Relief at Law. *Eq. Abr.* 14.

(3 I. 2.) When a Deed ſhall be aided, or avoided.

When a Deed ſhall be aided, or avoided, *Vide Conveyance, Ante,* (2 T. 1, *&c.* —*Obligation, Poſt,* (4 D. 1, *&c.*)

If a Man, upon a Diſpleaſure at his Son, makes a greater Settlement upon his Wife, but afterwards cancels the Deed; yet the Wife, if ſhe finds the Deed, ſhall have Advantage of it. 2 *Ver.* 476.

[If *A.* in Conſideration of Love to her Niece *B.* grants her Perſonal Eſtate to Truſtees, to permit *A.* to enjoy during Life, then after Debts and Funerals paid, to the ſeparate Uſe of *B.* or as ſhe ſhall appoint, and *B.* dies before *A.*; yet it goes to the Repreſentative of *B.* not to the Executor and Reſiduary Legatee of *A.* *Peck.* v. *Parrot, P.* 1749. 1 *Vezey* 236.]

If a Deed is diſcharged, by Payment, *&c.* the Court will compel the Delivery of it to the Party. *Vide Obligation,* (4 D. 1.)

So of a Deed with a Power of Revocation; if it is revoked purſuant to the Power; for the Deed of Revocation may be loſt. *Eq. R.* 1.

[If *A.* on coming of Age executes a Deed to *B.* his Agent of a Reverſion of Lands for 180 *l.* which was not paid or intended to be paid, it being merely a Bounty, and there are Covenants proper for a Vendor to a Vendee, but improper in a Grant of a Bounty, and there is no Fraud, the Deed ſhall not be reſcinded, but *B.* ſhall execute a Releaſe of the Covenants. *Cray* v. *Mansfield, H.* 1749. 1 *Vexey* 379.]

(3 I. 3.) When a Deed ſhall be produced.

If the Defendant by his Anſwer offers to produce a Deed, known to be in his Cuſtody, as the Court ſhall direct; it ſhall not be produced till the Hearing of the Cauſe.

If he pleads, that he himſelf is a Purchaſer for a valuable Conſideration, *as by a Deed ready to be produced appears,* he ſhall not be obliged to produce it to the Plaintiff. *Eq. Abr.* 36.

But where the Plaintiff is Co-heir with the Defendant, who having the Settlement of the Eſtate in his Hands, pretends a Deviſe to him, he ſhall produce the Settlement, before the Trial of the Will; for a Trial will be vain, without producing the Settlement, which belongs to the Plaintiff as well as to the Defendant. *R. Eq. Ca.* 99.*

* 2d Part of 2 *Mod. Ca.*

(3 K) Fines.

IF a Man has a Tenant-right Eſtate; a reaſonable Fine ſhall be eſtabliſhed by a Decree; as, the Value of one Year, upon a moderate Eſtimate. 1 *Ch. R.* 34, 96.

Vide Fine and Recovery, Poſt, (3 N. 1, 2.)

(3 L) Forfeiture.

When it ſhall be aided, and when not.

CHANCERY will relieve againſt a Forfeiture by Waſte upon a Copyhold, if Satisfaction is made for the Waſte, and there does not appear an Intent to commit the Waſte. *R. Ca. Ch.* 96. *Vide Copyhold,* (M. 3.)

So, againſt a Forfeiture of a Leaſe for Years, *&c.* for Non-payment of Rent.

And by *St.* 4 *Geo.* 2. 28. A Leſſee being relieved, ſhall enjoy according to the Leaſe, without a new Leaſe.

So, if Tenant for Life, as *Ceſtuy que Truſt*, levies a Fine of the Truſt-Eſtate, it ſhall not be a Forfeiture of his Truſt for the Benefit of him in the Remainder, or Reverſion. 2 *P. W.* 147.

[If *A.* deviſes his Eſtates to Truſtees, to his Daughter *B.* for Life, to Truſtees to preſerve, *&c.* to her firſt Son in Tail-male, ſecond and others in Tail-general, to the Daughters of *B.* and *C.* in Tail, to *D.* for Life, his Sons in Tail, and to *E.*; and *B.* conveys the Reverſion in Fee, expectant on the Remainders in the Will, to Truſtees for certain Uſes, and covenants to levy a fine *ſur conceſſit* to the Uſes, and both Deed and Fine recite the Limitations; it is not a Forfeiture, but only a Fine of the Reverſion. *Lethieullier* v. *Tracy*, *M.* 1750. 3 *Atkyns* 728.]

[If Tenant for Life of a Truſt Eſtate, with Truſtees to preſerve continent Remainders, levies a Fine *ſur conceſſit* of his Eſtate for Life, it is not a Forfeiture, but would only operate in Equity as a Grant of ſuch Intereſt as he had Power to grant. *Ibid.*]

[If a Fine *ſur conceſſit* is levied by Tenant for Life, Reverſioner in Fee expectant on ſeveral Limitations, Equity will not conſtrue it to work a Wrong. *Ibid.*]

But by the *St.* 4 *Geo.* 2. 28. Leſſee, or any claiming Right to a Leaſe, preferring a Bill for Relief in ſix Calendar Months after Judgment in Ejectment, and Execution thereon executed, ſhall not be reſtored to Poſſeſſion, unleſs he pay to the Leſſor what the Profits, which he received, or might, without wilful Neglect, have received, fall ſhort of the reſerved Rent.

So, if a Copyholder commits a Forfeiture, he ſhall not be aided.

As, if he makes a Leaſe not warranted by the Cuſtom. 2 *P. W.* 147.

So, if an Eſtate is ſettled in Truſtees in Truſt for *A.* for Life, afterwards to his Wife for Life, afterwards to their firſt and other Sons; and *A.* and his Wife make a Mortgage thereof to *B.* and levy a Fine to him; *B.* ſhall have it during the Lives of *A.* and his Wife. 2 *P. W.* 147.

(3 M) Fraud.

(3 M. 1.) When it ſhall avoid a Bargain.

FRAUD, Accident, and Breach of Truſt are proper for Relief in Conſcience, 1 *Rol.* 374. *l.* 10. 4 *Inſt.* 84. *Vide Ante*, (Z)—*Poſt*. (4 W. 1.) *Fraudulent Gift, or Feoffment, &c. Vide in Covin*, (B. 2, *&c.*)

And therefore, if a Man is decoyed by Fraud or Circumvention to make a diſadvantageous Bargain, he ſhall be relieved in Equity. *Vide Ante*, (2 C. 8. 9. 12. —2 T. 11.) *Poſt*, (4 L. 1.—4 W. 28, 29.)

As, if he is drawn in by Art or Covin to give 500 *l.* for Goods of but half that Value.

If he gives a Bill of Exchange for Value received, where nothing was paid and no Conſideration given. *R.* 2 *Ver.* 123.

Or Judgments for great Sums, when a ſmall Sum was paid. 3 *Ch. R.* 10.

If he is drawn in to execute a Releaſe, by Suppreſſion of the Truth, or by a Suggeſtion of a Falſhood. *P. W.* 240.

So if a young Gentleman is inveigled to give 500 *l.* for Goods, which he ſells only for 200 *l.* *Ca. Ch.* 276.

If an Heir apparent gives Security to pay 1200 *l.* after the Death of his Father, for Goods of 400 *l.* Value, and if he dies before his Father, then to pay nothing. 2 *Ca. Ch.* 137.

So, if he ſells the Reverſion of Land, after the Death of his Father, for a ſmall Sum, and an Annuity for the Life of his Father, tho' the Sale would be void, if he were to die before his Father. 2 *Ca. Ch.* 120. 1 *Ver.* 167. 2 *Ver.* 27, 77.

If upon a Loan of 2000 *l.* he gives Judgment to pay 5000 *l.* after the Death of his Father, or if he marries before. *R.* 2 *Ver.* 15. *P. W.* 312.

So, if he engages in Securities with others, upon Payment of the whole Money, which he received, he ſhall be aided. *R.* 2 *Ver.* 77.

So, if *A.* in the Remainder after the Death of his Uncle, without Iſſue, takes up Money by Loan, upon an Agreement to pay 1000 *l.* for every 100 *l.* if his

Uncle dies before him without Iſſue, and afterwards, upon a Bill in Equity to redeem or to foreclose, ſubmits to be foreclosed, and acknowledges by his Anſwer, that the Bargain was fairly made, he ſhall be relieved upon Payment of Principal and Intereſt, without Coſts. 2 *Ver.* 122.

If *A.* offers a Mortgage for 1000 *l.* if a Scrivener can find him a Gentleman, who will advance it; and the Scrivener contrives with *B.* who, as Agent for another Perſon, advances 300 *l.* only, and ſupplies Wine to the Value of 200 *l.* for 400 *l.* more, and diſcounts 300 *l.* Debt with the Scrivener, and takes Security of *A.* and the Scrivener: *A.* ſhall be relieved, upon Repayment of all that he received, *viz.* 300 *l.* and Intereſt. *R.* 2 *Ver.* 347.

So, if a Son, in Remainder in Tail after the Death of his Father, ſells 150 *l. per Ann.* for 1050 *l.* having Iſſue born. *R.* 1 *P. W.* 312.

So, if *A.* procures a Policy of Inſurance to be ſubſcribed by Fraud; a Verdict thereupon ſhall be avoided in Equity, with Coſts. 2 *Ver.* 206.

If *A.* a Deviſee by a Will not executed according to the *St.* 29 *Car.* 2. procures a Releaſe from the Heir and a Conveyance for a ſmall Sum. *P. W.* 239.

So, if *A* ſells Shares of a Bubble of no Value, he ſhall refund the Money. 2 *P. W.* 154.

And a Purchaſer ſhall be aided in Equity for the Fraud, tho' he has an Action at Law for the Money received to his Uſe. 2 *P. W.* 156. 220.

(3 M. 2.) Or Conveyance.

So, if by Fraud, or Circumvention a Perſon is engaged in the Execution of a Deed, or Conveyance. *Vide Ante*, (2 C. 12.—2 T. 11.) *Poſt*, (4 D. 3.—4 L. 1.—4 O. 1.)

If a Son, upon his Marriage, gives a Bond to refund Part of the Portion, without the Privity of his Father, he ſhall be relieved againſt the Bond, as fraudulent. 1 *Sal.* 156.

If by an Agreement of the Father, before Marriage, his Eſtate was to be ſettled upon his Daughter, and her Huſband and their Iſſue, and *A.* undertakes that a Conveyance ſhall be made accordingly, but procures a Conveyance to be made to himſelf in Fee, in Conſideration of a Debt due to him; it ſhall be cancelled, as fraudulent. *R. Ch. R.* 449.

If the Daughter and Heir of *B.* who was *Ceſtuy que Truſt* in Fee of an Eſtate in *A.* marries *C.* who procures the ſurviving Truſtee to convey to him; and then the Huſband and Wife levy a Fine, to the Uſe of the Huſband in Fee; it ſhall be ſet aſide as fraudulent, tho' five Years, and Nonclaim have paſſed; and the Huſband and Wife ſhall be decreed to reconvey to the Heir of *B.* *R. Ch. R.* 449.

[If *A.* a Year after coming of Age grants his Guardian or Truſtee an Annuity, and at the ſame Time a general Releaſe and two written Diſcharges, on his delivering up ſome Papers, it ſhall be ſet aſide on Principles of general Utility; and more eſpecially, if it appears the Guardian would not deliver the Eſtate till he had the Grant. *Hylton* v. *Hylton*, *T.* 1754. 2 *Vezey* 547.]

[Yet a Ward or *Ceſtuique Truſt* may, when of Age and put in Poſſeſſion, *et ſui Juris* and at Liberty, grant a Reward. *Ibid.*]

[*Vide Cray* v. *Manſield*, *ante* 3 I 2. *Oldham* v. *Hand*, *ante* 2 A 4. *Oldin* v. *Samborn*, *ante* 2 T 11. *Proof* v. *Hines*, *poſt*, 4 D. 3. *Walmſley* v. *Booth*, *poſt*, 4 D. 12.]

[If there is a Conveyance for a fictitious Conſideration, it ſhall not be afterwards ſet up as a Gift. *Bridgman* v. *Green*, *T.* 1755. 2 *Vezey* 627.]

[And this, tho' the fictitious Conſideration was inſerted by the Grantor; and tho' it has been found a Gift by a Jury, yet Equity will relieve. *Ibid.*]

[If *A.* Heir in Tail expectant (on the Death of his Father, aged ſeventy-two and infirm, and Tenant in Tail, with Remainder to himſelf in Fee) of an Eſtate worth 3000 *l.* and in neceſſitous Circumſtances, by Articles, in Conſideration of 1500 *l.* to be paid by *B.* in a Year, and a Houſe worth 200 *l.* to be conveyed to him, covenants to convey ſaid Eſtate in Fee to *B.* ſubject to his Father's Life, ſoon deſires to be off, but *B.* refuſes; then by Leaſe and Releaſe prepared by *B.* (an Attorney)

Attorney,) and executed at his Houſe, only him, his Son, and another preſent, and *A.* covenants, that he is ſeized in Fee, and a Clauſe of Warranty againſt his Father and his Heirs, and a Fine levied by *A.* declared to be to the Uſe of *B.* in Fee, and *B.* conveys the Houſe to *A.* but without Covenant or Warranty, and the Father ſoon dies, and *A.* writes Letters acquieſcing in the Tranſaction, then files Bill charging Fraud and praying Relief, and *B.* anſwers, denying Fraud; *B.* intimidates *A.* who ſtays Proceedings, and executes a Deed reciting the Proceedings that the Purchaſe was fair, and confirms and releaſes the Eſtate to *B.*; afterwards they, with a common Friend, ſettle Accounts; two Years after Bill is diſmiſſed, and three Years after that *A.* dies; yet the Whole ſhall be ſet aſide, on *A.*'s Son paying Principal, Intereſt, and laſting Repairs. *Baugh* v. *Price, in Sc. H.* 25 G. 2. 1 *Wilſ.* 320.]

(3 M. 3.) Tho' the Bargain or Settlement was to take Effect upon a Contingency.

So, tho' the fraudulent Contract is to take Effect upon a Contingency; as, if *A.* by Practice draws in *B.* for 300 *l.* to grant him 300 *l. per Ann.* in Fee; with a Proviſo that it ſhould be void if *A.* had Iſſue Male who ſhould attain the Age of twenty-one, tho' there was an Improbability that he ever ſhould have any Iſſue. *R.* 1 *Ver.* 238.

So, if *A.* upon a Loan of 2000 *l.* gives a Judgment for 5000 *l.* after the Death of his Father; and if he died before his Father, to pay nothing; for the Money would have been loſt, without mentioning of it, if *A.* died before his Father. *R.* 2 *Ver.* 15.

[An Heir of Twenty-ſeven, an Officer in the Guards, borrows 500 *l.* to pay 1000 *l.* if he ſurvives his Father and Father-in-law, otherwiſe the Lender to loſe his Money; if he ſurvives he ſhall be relieved, even tho' he has paid the Money thro' Fear. *Curwyn* v. *Milner*, *T.* 1731. 3 *P. W.* 292.]

[An Heir borrows 1000 *l.* and 1000 *l.* to pay 2500 *l.* for each if he ſurvives his Father, otherwiſe loſt, grants two Judgments for 5000 *l.* each, defeaſanced for 2500 *l.*; Relief granted as to the Penalties only, *per Nottingham* C. *H.* 33 *C.* 2. and he paid 5390 *l.* On rehearing, Plaintiff ordered to repay all above the 2000 *l.* lent, and Intereſt. *Per Jeffereys* C. *H.* 2 *J.* 2 *Berney* v. *Pitt*, 3 *P. W.* 293.]

[If a Sailor ſells his Prize-money to a Phyſician greatly under Value, he aſſigns it, Bill is brought to ſet Sale aſide, new Agreement to diſmiſs Bill with Coſts, and confirming the Sale for further Conſideration, and the Agent gives a Note to pay it outof the ſecond Dividend; both Agreements ſhall be ſet aſide. *Taylour* v. *Rochfort*, *P.* 1751. 2 *Vezey* 281.]

[If a Sailor's Prize-money is purchaſed at a great Under-value, and then aſſigned to another, both ſhall be ſet aſide, but ſhall ſtand as a Security for the Money really advanced to the Sailor. *How* v. *Edwards*, *T.* 1754. 2 *Vezey* 516. *Baldwin* v. *Rochford*, *M.* 22 *G.* 2. 1 *Wilſ.* 229.]

[*A.* has 500 *l.* left him if he ſurvives Teſtator's Wife; he ſells it for 100 *l.* to be paid by 5 *l. per Ann.* to him and his Executors, *&c.* but if the Wife dies in *A.*'s Life, what is then unpaid ſhall be paid in a Year; the Wife dies, the Executors controvert the Payment to the Purchaſer, *A.* hears their Anſwer read, blames them, and executes a Deed of Confirmation; this Bargain ſhall not be ſet aſide on a Bill brought by *A.* *Cole* v. *Gibbons*, *T.* 1734. *Per King* C. affirmed *per Talbot* C. 3 *P. W.* 290.]

[A Man caught in Bed with another Man's Wife, by the Huſband with a Sword in his Hand, who is about to kill him, gives a Note for 100 *l.*; when payable, gives a Bond for it, the Court will not relieve againſt the Bond, tho' it would againſt the Note. *Per Cowper* C. *Anon.* 3 *P. W.* 294.]

(3 M. 4.) Or was tranſacted by an Agent.

So, if the fraudulent Practice be managed by an Agent, to which the Party who gives the ſmall Conſideration does not appear to have been privy. 1 *Ver.* 240.

(3 M. 5.) So a voluntary Settlement will be fraudulent as to Creditors.

[A Settlement is not fraudulent for being voluntary, but it is an Evidence of Fraud, and there is ſcarcely a Caſe where the Perſon conveying was indebted at the Time, that it has not been deemed fraudulent; where not indebted at the Time, ſubſequent Debts do not ſhake the Settlement. *Hayward* v. *Hammond*, M. 1738. 1 *Atkyns* 13.]

So, if a voluntary Settlement is made of Lands, it will be fraudulent as to Creditors. *R.* 1 *Ch. R.* 132.

And, as to Articles for a Purchaſe upon a valuable Conſideration. 1 *Ch. R.* 146. *Vide Covin.*

So, a Bill of Sale from a Man to *A.* who cohabits with him as his Wife. 2 *Ver.* 490.

So a Settlement with a Power of Revocation will be fraudulent as to Creditors. *Vide Eq. Abr.* 148.

Tho' made after Marriage for the Jointure of a Wife, if it is not made purſuant to an Agreement precedent. *Ibid.*

[If Money is left to a Huſband who ſettles it in Truſtees to the Uſe of himſelf for Life, his Wife for Life, and then his Children, it is void as againſt his Creditors, either before or after his Marriage. *Taylor* v. *Jones*, T. 1743. 2 *Atkyns* 600.]

[If on Marriage of *A.* and *B. A.* and his Father promiſe to ſettle an Eſtate on her, in Conſideration of the Marriage and her Fortune, but ſhe refuſing to let the Father have it, he ſays ſhe ſhall have none of his Lands, and conveys them to *A.* and *A.* afterwards being indebted ſettles the Lands on *B.* for Jointure, and in ſtrict Settlement and dies; this is voluntary and void againſt Creditors. *Beaumont* v. *Thorp*, T. 1747. 1 *Vezey* 27.]

[But if a Man having a Son *A.* contracts on a ſecond Marriage to ſettle 400*l.* on Wife for Life, then to the Iſſue of that Marriage, together with *A.* and *A.* only ſurvives, he ſhall have the 400*l.* not ſubject to his Father's Creditors. *Ithell* v. *Beane*, H. 1748. 1 *Vezey* 215.]

So if *A.* makes a Settlement for the Jointure of his Wife after Marriage, with a Power of Revocation, and afterwards, upon a Treaty of a Marriage for his Nephew, propoſes to ſettle Lands of 700 *l. per Ann.* Value in *A.* and *B.* on ſuch Marriage, if a Portion of 2500 *l.* is given; if the Lands in *A.* and *B.* are not of the Value of 700*l. per Ann.* the Deficiency ſhall not be ſupplied out of Lands in *D.* ſettled many Years before for the Jointure of his Wife, tho' ſuch Settlement was voluntary, and with a Power of Revocation. *R. Ch. R.* 148.

So, if *A.* makes a voluntary Settlement for Payment of Creditors and for raiſing Portions for his Children, reſerving 50 *l. per Ann.* to himſelf for his Life, it will not be fraudulent againſt Creditors by Bond given twelve Years afterwards, tho' the Truſtees did not enter directly but ſuffered *A.* to live in his Houſe. *Cont. per Hutchins, but two Commiſſioners dub.* 2 *Ver.* 261.

If *A.* upon the Purchaſe of a Term, directs it to be aſſigned to *B.* in Truſt for himſelf for Life, and afterwards for a Woman, with whom he cohabits as his Wife, it will not be fraudulent; for the Term never was in him, and upon a Purchaſe, a Man diſpoſes of the Eſtate as he pleaſes, and it will not be fraudulent. *R.* 2 *Ver.* 490.

[If a Son taking a Benefit from his Father's Will promiſes to make it good, it may be a valuable Conſideration for a Bond or Settlement. *Blount* v. *Doughty*, P. 1747. 3 *Atkyns* 481.]

(3 M. 6.) But Fraud ſhall not be preſumed.

But Fraud ſhall not be preſumed in Law or Equity, without manifeſt Proof. 3 *Ca. Ch.* 85, 114.

Nor ſhall it be determined in Equity, after it has been found by a Verdict at Law. 2 *Ver.* 238.

(3 M. 7.) A Party to the Fraud ſhall not be relieved.

A Party to the Fraud ſhall not have Relief; as, if *A.* intruſted to receive Intereſt for *B.* receives the Principal, and then fails, and compounds for 9*s.* in the Pound, but *B.* will not accept ſuch Compoſition, without a private Agreement for 175*l.* *A.* ſhall not be relieved againſt this Agreement. *R.* 2 *Ver.* 602.

[If *A.* on an intended Marriage between his Son *B.* and *C.* propoſing to give a Bond for 100*l. per Annum* for their Lives, and the Survivors, is perſuaded by *C.* to make it 150*l.* that thereby her Uncle may be induced to make a larger Proviſion for her, promiſing to demand only 100*l.* tho' there is no Contract on the Part of the Uncle, and tho' *C.*'s Mother is living, yet if *A.* treats with him, he ſhall be conſidered as *in Loco Parentis*, and *A.* ſhall not be relieved againſt his Bond. *Pitcairne* v. *Ogbourne*, *T.* 1751. 2 *Vezey* 375.].

So, if *A.* compounds with his Creditors, but makes a private Agreement with ſome of them, to induce an Acceptance of the Compoſition by others; he ſhall not be relieved on the Agreement to compound, againſt the Creditors who ſigned the Agreement. *R.* 2 *Ver.* 71.

But if a Mortgagee upon her Marriage ſettles the Eſtate on herſelf for Life, and afterwards on her Iſſue, and the Mortgagor, upon a Decree for Redemption, pays the Money to the Mortgagee, who takes no Notice of the Settlement in her Anſwer; and afterwards the Son of the Mortgagee recovers in Ejectment; the Mortgagor ſhall be relieved, for there was no Default in him. *R.* 2 *Ver.* 142.

(3 N) Fine and Recovery.

(3 N. 1.) Avoided for Fraud, &c.

CHANCERY will aid againſt a Fine or Recovery ſuffered by Fraud: As, if a Woman levies a Fine and declares the Uſe to *A.* and his Heirs, where it was intended to him only for Life. *Vide Poſt*, (4 K. 1, 2 — 4 S. 4.)

Or, where there is Proof that it was intended to *A.* only in Truſt, and ſhe deviſes it to *B.* *Eq. Abr.* 258.

So, if a Deviſe is to Truſtees, till Debts are paid, and then to an Infant and his Heirs; *B.* enters, levies a Fine, and five Years paſs without Claim, whereby the Infant at full Age is barred in Ejectment; He ſhall be aided in Equity; for he ſhall not ſuffer by the Neglect of the Truſtees in not entring. *Ibid.*

But *Chancery* does not vacate the Fine or Recovery for the Fraud, but decrees a Reconveyance; for if there be Error in it, or if the Fine is irregular, or razed, or obtained by Practice, it may be vacated by the Court of *C. B.* *R. Eq. Abr.* 259.

[Tenant for Years, at Will, or at Sufferance, cannot by a Fine deveſt an Eſtate and turn it to a Right. *Brereton* v. *Gamul*, *H.* 1741. 2 *Atkyns* 240.]

[Confeſſion of Leaſe, Entry and Ouſter in an Ejectment will not give a Seiſin to Defendant in Ejectment, ſo as to enable him to levy a Fine. *Ibid.*]

[Tho' more Parcels of Land are put into a Fine than belong to the Conuſor, yet a Court of Equity will reſtrain it to his Land. *Ibid.*]

[Suppoſing a Fine to be good in Law, yet if it is levied by a Perſon who is in the Nature of a Truſtee, as an Adminiſtrator and Guardian, intitled to a Sum to pay Debts, and diſtribute to the Infant, this Court will not ſuffer it to bar the equitable Intereſt of Creditors and Infant. *E. Pomfret* v. *Ld. Windſor*, *T.* 1752. 2 *Vezey* 472.]

(3 N. 2.) Aided, when defective.

So Equity will aid the Defects in a Fine, or Recovery. *Vide Eq. Abr.* 258.

[If Husband and Wife mortgage, and covenant to levy a Fine in *Easter* Term next, but do not till *Trinity* three Years after, and then sell the Equity of Redemption, and covenant that the Fine shall be to the Uses of this last Deed, it is good. *Fleetwood* v. *Templeman*, *M.* 1740. 2 *Atkyns* 79.]

But if Tenant in Tail covenants to levy a Fine, and the Caption is taken, and he dies before the Fine is perfected, *Chancery* will not make the Fine good. *Semb. Eq. Abr.* 258. *Vide Post*, (4 S. 2.)

So, if *A.* upon the Marriage of his eldest Son, levies a Fine to the Use of him in Tail, and upon his Death without Issue, to the Use of the Younger Son in Tail, *&c.* The Eldest has Issue, who mortgages to *B.* and dies without Issue; Equity will not aid a Defect in the Date of the Deed, which leads the Uses, upon a Bill by the Younger Son; for the Consideration did not extend to him. *R. Eq. Abr.* 258.

If a Fine is levied by a Purchaser having Notice of a Trust, tho' five Years pass without Claim, the *Cesty que Trust* shall not be barred. *Eq. Abr.* 256, 7.

If Tenant for Life makes a Mortgage, and levies a Fine to corroborate it, and afterwards his Son, who has the Remainder in Fee, enters for the Forfeiture, the Mortgagee shall have it during the Life of the Mortgagor. *Eq. Abr.* 257.

And during the Life of his Wife, if she, having a Trust for her Life, joins in the Fine. *R.* 2 *P. W.* 147.

But, if a Purchaser without Notice levies a Fine, and five Years pass, the Trust will be barred. *Vide Eq. Abr.* 256.

[But if *A.* in Marriage Settlement gives his Wife a Power to dispose of 100*l.* by Will, to be paid to her a Year after his Death, and in Default impowers *B.* to make a Lease of Lands to raise it; the Wife makes an Appointment, but never receives the 100*l.* while living; the Heirs of *A.* mortgage the Land to *C.* without Notice; *C.* afterwards purchases the Lands, the Heirs of *A.* levy Fine, and convey the Equity of Redemption to *C.* who has then Notice of the Power; tho' five Years elapse, yet the Appointee shall have the 100*l.* and Interest from one Year after the Wife's Death. *Willis* v. *Shorral*, *H.* 1738. 1 *Atkyns* 474.]

Vide Fine, (I. 2.)

(3 O) Guardian.

(3 O. 1.) How he shall account.

Vide Guardian. Vide Ante, (2 A. 1.)

WHEN, and how a Guardian shall be assigned to an Infant, *Vide Guardian*, (A.—F. 2.)

If a Parent receives a Legacy given to his Son, and is sued for it, he shall not be allowed for the Maintenance and Education of the Infant, out of the Principal Sum. *R.* 33 *Car.* 2. 2 *Vent.* 353.

[A Father cannot apply a Legacy left to a Child by a Relation in its Maintenance, nor putting it out Apprentice, or setting it out in the World. *Darley* v. *Darley*, *M.* 1746. 3 *Atkyns* 399.]

If a Guardian compounds a Debt, charged upon the Estate of the Infant, he shall not be allowd more of the Infant, than was paid. *R.* 2 *Ca. Ch.* 245.

[If any Person, Father or Stranger, enters on an Infant's Estate, and continues in Possession, he shall account as a Guardian, unless the Infant waives it when of Age. *Morgan* v. *Morgan*, *H.* 1737. 1 *Atkyns* 489.]

But a Father shall discount the Money for putting out the Infant Apprentice, out of a Legacy given to his Son. 2 *Vent.* 353. 1 *Ver.* 255.

So, Money paid for a Debt charged upon the Estate of an Infant. *Ca. Ch.* 157.

And Money laid out for Education, where the Interest is too little for that Purpose. 1 *Ver.* 255. *R. Ch. R.* 2.

[Yet if a Man leaves 100*l.* to his Son, not to be paid till Twenty-one, and 5*l.* *per Annum* for his Maintenance till then; the Mother Executrix ſhall have no Allowance for putting him Apprentice, fitting him out for the *Eaſt-Indies*, or Maintenance, but the 100*l.* and Intereſt from the Son's Death ſhall be paid to his Legatee. *Smee* v. *Martin*, *M.* 1723. *Bunb.* 136.]

(3 O 2.) How he ſhall manage the Eſtate of the Infant.

If a Guardian has Money of an Infant in his Hands, he ſhall employ it in the Payment of Debts charged upon the Eſtate of the Infant, and ſhall not pay them with his own proper Money. *R. Ca. Ch.* 156, 7.

[*A.* ſeized of ſome Lands in Fee, and of others in Tail, deviſes the Lands in Fee (except 30*l.* *per Annum*) to his Daughter, and dies, leaving Son and Daughter Infants; his Widow takes the Profits of both Eſtates as Guardian, and on Bill brought for Account ſwears ſhe paid Bond-debts out of the Profits of the intailed Eſtate, and then dies inſolvent; the Anſwer cannot be read againſt the Daughter, and there is no other Evidence; the Court will intend ſhe paid the Bond-debts out of the Fee-ſimple Eſtate, as ſhe ought to have done. *Chaplin* v. *Chaplin*, *T.* 1735. 3 *P. W.* 365.]

If the Eſtate of an Infant is mortgaged, it may be diſcharged out of the Aſſets of his Father; and if the Infant dies, whereby the Eſtate deſcends to a remote Heir; the Guardian ſhall not have the Money repaid. 2 *Ver.* 193.

If 100*l.* is given to an Infant at his Age of Twenty-one, and if he dies before, to *B.* the Guardian ſhall be allowed 20*l.* out of the 100*l.* for putting him out Apprentice, tho' he died before Twenty-one. 2 *Ver.* 137.

So the Guardian of an Infant ought to pay the Intereſt due upon a Mortgage of his Eſtate, out of the Profits. 2 *P. W.* 279.

But if a Guardian purchaſes for an Infant Lands, with the Profits raiſed out of the Real Eſtate of the Infant, and declares that it ſhall be for him and his Heirs, if he diſcharges the Guardian of the Purchaſe-money; the Infant dies under Age; the Heir of the Infant ſhall not have the Land, the Purchaſe not being made by the Direction of *Chancery*, but his Executor ſhall have the Money. *R.* 1 *Ver.* 403, 435.

[If a Guardian is directed by Will to make Purchaſes for the Benefit of Infant, he may on a Life in a Leaſe's dropping take a new Leaſe for new Lives, tho' thereby the Eſtate which before would have deſcended *parte materna*, now deſcends *parte paterna*. *Pierſon* v. *Shore*, *T.* 1739. 1 *Atkyns* 480.]

So, if a Guardian veſts the Perſonal Eſtate of an Infant in the Purchaſe of Lands for the Infant; the Guardian ſhall take the Purchaſe, and ſhall be anſwer-ſwerable to the Infant for the Money. *Vide* 1 *Ver.* 436.

[Guardian cannot turn Infant's ancient Paſture into Arable, tho' on Account of the Diſtemper among Cattle it is waſte. *Clarke* v. *Thorpe*, *H.* 1750. 2 *Vezey* 232.]

[If Truſtee has an Infant's Money to lay out in Funds, and lays it out in Trade, the Infant has his Option to take the Profits of Trade, or the Intereſt. *Anon.* *T.* 1755. 2 *Vezey* 629.]

So, if *A.* dies indebted by Bond or other Specialty, his Heir under Age; if the Guardian pays off the Bonds, and takes Aſſignments, he ſhall have a Diſcovery of Aſſets againſt the Heir of the Infant; for he was not bound to pay the Debts upon Specialty out of the Real Eſtate of the Infant. *R.* 2 *Ver.* 606.

[The Court may make a liberal Allowance out of the Infant's Eſtate to a Mother a Guardian, who is in diſtreſſed Circumſtances. *Roach* v. *Garvan*, *M.* 1748. 1 *Vezey* 157.]

(3 O. 3.) How directed by the Court.

If a Guardian in Socage is not of Sufficiency, *Chancery* will oblige him to give Security. *Decreed per North*, 2 *Mod.* 177. *Eq. Ca.* 137.* *Eq. Ca.* 173.†

If he is ſuſpected to be inſufficient, the Court will oblige him to account annually. 3 *Ch. R.* 59.

* 2d Part of 2 *Mod. Ca.*
† *Gilb.*

And

And the Court can determine a Right to a Guardianſhip, without Bill, upon a Petition. 2 *P. W.* 118, 124.

[There may be an Application to the Court in Caſe of a Guardianſhip of Children, tho' there is no Cauſe depending. *Melliſh* v. *De Coſta, M.* 1737. 2 *Atkyns* 14.]

[If there is no Bill filed, no Father, Mother, nor teſtamentary Guardian, no Socage Lands, the Court will, on Petition, refer to the Maſter to ſee who is the moſt proper Perſon for Guardian. *Ex parte Watkins, T.* 1752. 2 *Vezey* 470.]

[The Court may do ſeveral Things *ex Officio* for Infants; may give extrajudicial Directions, may hear a Stranger as *Amicus Curiæ*, may on his Complaint of the Guardian, and of Abuſe of Infant's Eſtate, and Undertaking to pay Coſts, direct the Maſter to examine Receiver's Accounts, *&c.* *E. Pomfret* v. *Ld. Windſor*, *T.* 1752. 2 *Vezey* 472.]

So, if a Guardian by Teſtament endeavours to marry the Infant to his Diſparagement, *Chancery* will oblige him to give Security to the contrary. 2 *Ca. Ch.* 238. *Eq. Ca.* 137.* 2 *P. W.* 110.

*2d Part of 2 *Mod. Ca.*

So, if a Guardian commits Waſte upon the Eſtate of the Infant, an Injunction ſhall be granted. *R. Hard.* 96.

So, if the Guardian to a Baſtard is not a proper one, the Court may remove him to the natural Father. *Eq. Ca.* 116.*

*2d Part of 2 *Mod. Ca.*

[If an Infant is about to marry when there is no Cauſe in Court, without the Approbation of his teſtamentary Guardians, and they file a Bill, and preſent a Petition, the Court will order the Infant to continue in their Care and Cuſtody, and that they do not permit him to marry, and the Father of the Lady not to permit his Daughter to marry the Infant without the Conſent of the Court. *Caſe of Ld. Raymond (and Miſs Chetwynd) M.* 8 *G.* 2. *C. T. T.* 58.]

So, if any Perſon marries an Infant, without the Conſent of the Guardian allowed by the Court, it will be a Contempt, *Eq. Ca.* 177. 2 *P. W.* 111.

Cont. if it is not a Guardian allowed by the Court. 2 *P. W.* 562.

[Marrying an Infant, Ward of the Court, is a Contempt, tho' the Parties concerned did not know it. *Herbert's Caſe, T.* 1731. 3 *P. W.* 116.]

[*Contra*, to make Perſons liable to the Cenſure of the Court, they muſt have had a Hand in the Contrivance of the Marriage, and been apprized that the Infant was a Ward of the Court. *More* v. *More, P.* 1741. 2 *Atkyns* 157.]

[The Court will order a Man not to marry a Ward of the Court, and that all Letters importing Promiſe of Marriage be produced before the Maſter, and if he is an Infant, will order his Guardian (his Father) tho' not before the Court, not to permit him to marry the Ward. *Smith* v. *Smith, H.* 1745. 3 *Atkyns* 304. *Beard* v. *Travers, M.* 1749. 1 *Vezey* 313.]

If the Court appoints a Guardian, he uſually gives a Recognizance that the Infant ſhall not marry, without the Leave of the Court, with his Privity. *P. W.* 698. 2 *P. W.* 112.

And if the Clauſe [with his Privity] is omitted. the Court will not ſuffer the Recognizance to be ſued, if done without his Privity. *P. W.* 698.

[If a Mother appointed Guardian to two Daughters by the Court, miſbehaves, and endeavours to marry one of them to *A.* an improper Perſon, the Court will order her to place them with a proper Perſon, that the Daughter ſhall not marry without Leave of the Court, nor *A.* ſee or write to her. *Roach* v. *Garvan M.* 1748. 1 *Vezey* 157.]

So the Accomplices to a Marriage may be committed. 2 *P. W.* 112.

But if an Uncle takes an Infant out of the Cuſtody of his Guardian for his advantageous Education, and ſends him out of the Realm; the Infant ſhall be ſent for home. 2 *Ca. Ch.* 238.

If a Guardian recovers upon a Bond made to an Infant, he ſhall be obliged to acknowledge Satisfaction for ſo much as he received. *Mo.* 852.

Yet a Guardian in Socage ſhall not be compelled to give Security, till there is ſome Default in him. 3 *Ch. R.* 60.

[Infant went to *Oxford*, tho' his Guardian would have him go to *Cambridge*; the Court ſent a Meſſenger to carry him from *Oxford* to *Cambridge*, and on his returning

returning again, another, *tam* to carry him to *Cambridge*, *quam* to keep him there. *Tremain's Caſe*, *P.* 5 G. *in Canc.* *Str.* 168.

[The Court will not indulge an Infant in the Choice of what School he ſhall go to, but will compel him to go where his Guardian pleaſes. *Hall* v. *Hall*, *T.* 1749. 3 *Atkyns* 721.]

[If teſtamentary Guardians differ as to the Education of their Ward, the Court will receive Parol Proof of the Father's Intention. *Anon.* (*Ld. St. John's Caſe*) *M.* 1750. 2 *Vezey* 56.]

[The Inclination of an Infant of the Age of Puberty as to the Place of Reſidence is of Weight, where there is no Imputation on the Perſon choſen. *Miſs Nichol's Caſe*, *T.* 1751. 2 *Vezey* 374.]

(3 O. 4.) When he ſhall be removed.

If a Guardian at Common Law miſbehaves himſelf, the Court, upon Cauſe ſhewn, may remove him. *Vide Eq. Abr.* 261. 1 *P. W.* 703.

So, if a Guardian appointed by the Court is in poor Circumſtances. *Eq. Ca.* 116, 140. *

So a Guardian appointed by Chancery, or by the Eccleſiaſtical Court, is removeable *ad Libitum*. *Eq. Ca.* 140.* * 2 Part of 2 *Mod. Ca.*

So, if Guardians appointed by Will miſbehave themſelves, the Court may interpoſe. *P. W.* 703.

Or, if there is only a Suſpicion of their Miſbehaviour. *P. W.* 705.

Or, if the Guardians are directed to adviſe with *B.* who is attainted, they ought to act by the Advice of the Court. *P. W.* 706.

(3 O. 5.) When not.

But where a Guardian is appointed by Will, the Court will not remove him. 2 *Ca. Ch.* 238. Without Cauſe. *Semb.* 1 *Ver.* 442.

If ſeveral are appointed Guardians, the Court will nominate the Survivor; for the Intereſt ſurvives. *Eq. Ca.* 175.

If a Father, by Will, appoints his Wife, and *A.* Guardians to his Son, and, if his Wife marries, that they ſhall appoint another; the Wife marries, but ſhe and *A.* do not agree to name another; *Chancery* will appoint a Guardian. *R. P. W.* 703. *in Marg.*

If a Guardian is appointed by the Court for a Lunatick, the Court will not remove him, becauſe there is another Perſon nearer in Blood; for he has not the Right of Cuſtody by Proximity of Blood. *R.* 2 *Ca. Ch.* 239,

So, if a Guardian is appointed to the Intent to pay himſelf a Debt due from the Father, he ſhall not be removed without Payment of the Debt, or Abuſe of the Truſt. 1 *Ver.* 442.

Yet a Teſtamentary Guardian, as well as a Guardian by Nature, or Nurture, or in Socage, may be removed by *Chancery*, upon reaſonable Cauſe. *R. Eq. Ca.* 141.* *P. W.* 703. * 2d Part of 2 *Mod. Ca.*

[The Court will not determine a Guardianſhip, or diſcharge an Order made for a Guardian, becauſe of a Marriage. *Roach* v. *Garvan*, *M.* 1748. 1 *Vezey* 157.]

(3 O. 6.) When Payment to a Guardian is allowed.

If Guardians appointed by Will to an Orphan, account in the Court of Orphans, for Money due to the Orphan, and pay the Balance to *B.* named Guardian, at the Requeſt of the Friends of the Orphan, by the Court, who has given Security *pro tanto* to the Court; the Payment ſhall be good, tho' *B.* afterwards fails, the Orphan, at his full Age, having allowed *B.* for his Guardian. *R.* 2 *Ch. R.* 12.

But if *A.* named Guardian to an Orphan, and Executor to his Mother, pays to *B.* choſen by the Friends of the Orphan and approved by the Court for his Guardian, Money over and above the Sum for which *B.* gives Security; that Payment does not diſcharge *A.* tho' the Orphan, after his full Age, approves of *B.* for his Guardian. *R.* 2 *Ch. R.* 12.

So Payment of a Legacy to the Father of an Infant, tho' there was a parol Direction by the Teſtator, that it ſhould be paid to him, and tho' the Son accounts with the Father, and does not make a Demand of the Legacy for fifteen Years after his full Age, ſhall not be allowed, when the Son afterwards becomes a Bankrupt, *R. P. W.* 285.

(3 O. 7.) The Power of a Guardian.

A Guardian ſhall be by Common Law, or by Statute.

By Common Law there was a Guardian in *Chivalry*; but this was taken away by the *St.* 12 *Car.* 2. 24. But Guardians in Socage, by Nature, or for Cauſe of Nurture, continue. *Vide Ante*, (3 O. 1.)

By the *St.* 4 & 5 *Ph. & M.* 8. If any take a Damſel under ſixteen, out of the Cuſtody of the Perſon to whom the Father by Will, or Act in his Life-time appoints it, he ſhall ſuffer two Years Impriſonment, or pay ſuch Fine as the Court ſhall aſſeſs.

By the *St.* 12 *Car.* 2. 24. *ſ.* 8, 9. A Father may by Deed in his Life-time, or by Will, diſpoſe of the Cuſtody and Tuition of his Child or Children, till their Age of twenty-one or any leſſer Time, and ſuch Diſpoſition of the Cuſtody to be good and effectual againſt all Perſons claiming the Cuſtody or Tuition of ſuch Child or Children as Guardians in Socage, or otherwiſe; and the Perſons, to whom ſuch Cuſtody ſhall be diſpoſed, may maintain an Action of Raviſhment of Ward, or Treſpaſs againſt any Perſons wrongfully taking them away, and recover Damages for the Benefit of ſuch Child or Children. And the Perſons to whom ſuch Cuſtody ſhall be diſpoſed may take into their Cuſtody to the Uſe of ſuch Child or Children the Profits of all their Lands, and the Cuſtody and Management of their Perſonal Eſtate, till their Age of twenty-one, or any leſſer Time according to ſuch Diſpoſition, and may bring ſuch Actions as by Law a Guardian in Socage might do.

And if three are appointed, and one dies, the Survivors are Guardians, tho' it is not ſaid, *To the Survivors*. *R.* 2 *P. W.* 107, 121.

Guardian in Socage, or by the *St.* 12 *Car.* 2. has an Authority and Truſt coupled with an Intereſt. 2 *P. W.* 122. *Vide Guardian*, (B. 1, *&c.*—E. 2.)

And therefore, he may make Leaſes, grant Copyholds, avow in his own Name, maintain Raviſhment of Ward, *&c.* 2 *P. W.* 122.

But a Guardian by the *St.* 4 & 5 *Ph. & M.* has only a bare Authority. 2 *P. W.* 122.

[It is clear in Point of Law, that a teſtamentary Guardianſhip is not aſſignable. *Melliſh* v. *Da Coſta*, *M.* 1737. 2 *Atkyns* 14.]

(3 P.) Heir.

(3 P. 1.) When ſubject to the Debts of the Anceſtor.

Vide Heir.

IF a Man by Specialty binds his Heirs, the Heir ſhall be liable to the Payment of the Debt, if he has Aſſets by Deſcent from his Anceſtor. *Vide Aſſets*, (A). *Pleader*, (2 E. 2, *&c.*) *Ante*, (2 G. 1, *&c.*)

When he ſhall be bound by the Covenant of the Anceſtor, *Vide in Covenant*, (C. 2.)

And tho' the Penalty of a Bond is 40 *l.* inſtead of 400 *l.* it ſhall be aided againſt the Heir. *R.* 2 *Ca. Ch.* 225.

And there ſhall be the ſame Decree againſt the Heir as upon a Judgment at Law. *R.* 2 *Ca. Ch.* 225.

If a Man has Land charged with an Annuity of 250 *l.* for four Years, and receives the Rent, but does not pay the Annuity; the Land ſhall be charged in the Hands of his Heir, tho' the four Years are expired. *R.* 2 *Ver.* 180.

If a Man ſettles Land in Truſtees for Payment of Debts; it ſhall be good againſt the Heir, tho' no Creditor is a Party, nor any particular Debt expreſſed, nor Covenant for Payment. *R. Ca. Ch.* 249. *Vide Poſt*, (4 W. 14.)

Tho'

Tho' the Conveyance would be otherwiſe void. *Ca. Ch.* 249.

So, if Land is ſettled to be ſold for Payment of Debts; tho' the Heir ſhall have Advantage of the Perſonal Eſtate, to be applied in the firſt Place for Payment of Debts: Yet a Purchaſer of the Land ſhall be ſafe, tho' the Perſonal Eſtate was not ſufficient for the Payment of the Debts, and the Heir ſhall take his Remedy againſt the Truſtee. *R.* 2 *Ca. Ch.* 115.

So a Purchaſer ſhall hold againſt the Heir, tho' the Truſtee embezils the Money. *Ibid.*

So, if *A.* grants a Watercourſe in his Land to *B.* and covenants for himſelf and his Heirs to cleanſe it, and that all Fines and Recoveries of the Land ſhall be for Confirmation of the Grant, and a Recovery is afterwards ſuffered; the Heir ſhall be obliged to cleanſe the Watercourſe, for the Covenant runs with the Land. *Eq. Abr.* 27.

(3 P. 2.) When not.

But the Heir ſhall not be anſwerable to another for the Debt of his Anceſtor, who bound himſelf and his Heirs by Specialty, if he has not Aſſets by Deſcent.

So, in a Writ of Error againſt the Heir on an erroneous Judgment obtained by the Anceſtor in a Real Action, the Heir ſhall not render Damages, if he has not Aſſets by Deſcent. *Bro. Aſſets* 3.

So a Bill for Diſcovery of Aſſets, againſt the Heir, to ſatisfy the Bond of his Anceſtor, ſhall not be allowed, if it does not appear that the Heir was bound by the Bond. 1 *Ver.* 180.

So, if there is a Verdict againſt the Heir, upon a falſe Plea in Debt upon the Bond of his Anceſtor, and he dies before the Day in Bank, a Bill for Relief againſt his Deviſee ſhall be diſmiſſed. 1 *Ver.* 400.

(3 P. 3.) What Advantages an Heir ſhall have, and what not.

When Land is charged with the Payment of Debts, the Perſonal Eſtate ſhall be firſt applied in Aid of the Land. *Vide Ante,* (3 A. 3, *&c.*) *Poſt,* (3 Y. 2.)

And the Surplus ſhall be decreed to the Heir. *Vide Ante,* (3 A. 5.)

So, when by Settlement Portions are charged upon Land, to be paid at full Age, if the Infants die before, the Benefit accrues to the Heir. *Vide Poſt,* (3 Y. 2, 8, 15.)

[If a Man deviſes his Real Eſtate, and alſo his Perſonal Eſtate, to truſtees, to ſell both for Payment of Debts, and then to apply the Money ariſing from the Perſonal and alſo from the Real Eſtate among his five Children, thus, to the eldeſt Son 200*l.* which he *gives him at* Twenty-one, and the Reſidue thereof among the four others, ſhare and ſhare alike: And if any of the four younger die, his Share to go to the Survivor; if the eldeſt die before Twenty-one, the 200*l.* ſhall go to the Heir of the Teſtator. *Cruſe* v. *Barley, M.* 1727. 3 *P. W.* 20.]

[Whether a Portion charged on Land is given with or without Intereſt, by Deed or by Will, if the Perſon dies before the Age at which it becomes payable, it ſhall ſink into the Eſtate. *Boycot* v. *Cotton, M.* 1738. 1 *Atkyns* 552.]

[But the Intereſt accrued thereon before his Death, if not paid, ſhall be paid to the Perſon who maintained him. *Ibid.*]

So, if a Deviſe is of the Real Eſtate, ſubject to Debts and Legacies, and that the Creditors and Legatees not paid may enter till ſatisfied; the Perſonal Eſtate goes in the firſt Place in Aid of the Real. *R.* 2 *Ver.* 121.

So, a Deviſe of Lands for ſixteen Years for Payment of Debts and Legacies; the Surplus ſhall be to the Heir. 2 *Ver.* 645.

Or, if it is for 500 Years to pay Debts and Legacies, and four Years afterwards to attend the Inheritance; the Surplus ſhall be immediately to the Heir after Debts and Legacies paid. 2 *Ver.* 645. *Eq. Ca.* 187.*

So a Deviſe of Lands to be ſold to pay Debts and Legacies, the Surplus to his Executor, and to be Perſonal Eſtate, ſhall go to the Heir. 2 *Ver.* 645.

* 2d Part of 2 *Mod. Ca.*

But

But if a Man deviſes Land to be ſold for Payment of Debts and Legacies, and the Surplus to his Heir, and deviſes his Goods with his Houſe, and the Reſidue of his Perſonal Eſtate to his Siſter, whom he makes Executrix; the Perſonal Eſtate ſhall not go in Aid of the Real. 2 *Ver.* 718. *Eq. R.* 72, 129.

[If *A* ſeized in Fee of Lands, poſſeſſed of perſonal Eſtate, gives all his worldly Goods to his Wife, and then deviſes the Lands to her for Life, then to *R.* his Son, and his Heirs, and gives *M.* his Daughter 150 *l.* to be paid her in twelve Months after *R.* ſhall come to enjoy the Premiſſes; and if *R.* dies before his Mother, then *H.* another Son coming to the Poſſeſſion thereof, and ſurviving his Mother ſhall pay *M.* 200 *l.*; this Charges the Real Eſtate only, and ſhall be paid by the Heir claiming under the Deviſee and Heir at Law of Teſtator. *Miles* v. *Leigh, M.* 1738. 1 *Atkyns* 573.]

So if the Grandfather mortgages and dies, then the Father dies; the Perſonal Eſtate of the Father ſhall not be applied for the Payment of the Mortgage. *Sal.* 450.

If a Man purchaſes an Equity of Redemption, the Mortgage ſhall not be paid out of his Perſonal Eſtate. 1 *Ver.* 37.

So, if a Mortgagor deviſes Lands in Mortgage to *B.* and other Land for Payment of Debts; *B.* ſhall take the Lands in Mortgage *cum Onere*. *R.* 2 *Ver.* 183.

[If *A.* deviſes Lands to *B.* in Tail, Remainder over, *&c.* then in Mortgage for 1300 *l.* and deviſes other Lands ſubject to his Debts, in caſe his perſonal Eſtate and other Eſtates deviſed for that Purpoſe are not ſufficient, to *C.*; the 1300 *l.* muſt be paid out of Perſonal Eſtate, or if deficient out of the Real Eſtate deviſed to *C. Bartholomew* v. *May, H.* 1737. 1 *Atkyns* 487.

[If a Man ſeized in Fee of an Eſtate, having borrowed Money, gives Bond for it, and afterwards a Mortgage on it, and afterwards by Will deviſes the Eſtate in Fee ſo mortgaged, and alſo an Eſtate for Lives to *A.* his Wife, and makes her ſole Executrix, and after making his Will purchaſes at two different Times the Reverſion in Fee of the Life-hold Eſtate, and dies without altering his Will; the Life-hold Eſtate, and the Reverſion of it, ſo purchaſed, ſhall deſcend to the Heir at Law, but it ſhall be liable as Real Aſſets to exonerate the mortgaged Eſtate in Fee deviſed to *A.* the Wife. *Galton* v. *Hancock, M.* 1742. *T.* 1743. *T.* 1744. 2 *Atkyns* 424. 427. 430.]

[If *A.* and *B.* his Wife, ſeized in Right of *B.* of Lands in *D.* held by Leaſe for three Lives, and ſeized of the Inheritance in Fee, expectant on the Death of *B.*'s Grandmother and Mother, of a Manor and Lands in *L.* mortgage the Lands in *D.* for 1000 *l.* and then the Manor, *&c.* in *L.* for 800 *l.* and then on borrowing 200 *l.* more, ſubject both to Payment of the three Sums, and before Payment *A.* dies, and *B.* becomes ſolely ſeized, and borrows 240 *l.* 6 *d.* which with 159 *l.* 19 *s.* 6 *d.* Intereſt, makes up 2400 *l.* and by Indorſement on the ſecond Mortgage makes both ſubject thereto; and then agrees with *C.* that for 2260 *l.* 10 *s.* ſhe will convey to him and his Heirs the Eſtate in *L.* ſubject to the two Lives, the Money to be applied in Diſcharge of the Mortgage, and that the Leaſe ſhould be renewed, and a third Life (*C.*'s Son) added, and then *C.* to lend her 1600 *l.* to pay the Reſidue of the Mortgage, the Fine, and her Debts, and *C.* pays 100 *l.* and the Grandmother dying, *C.* agrees to pay 146 *l.* more, and pays ſeveral other Sums in Part, and the Leaſe is renewed and the Fine paid, and *C.* takes Notes and a Bond for the Sums advanced till the Agreement ſhall be compleated, and before that *B.* dies inteſtate. On a Bill brought by her Adminiſtrator for himſelf and the Creditors of *C.* admitting the Facts, the Agreement ſhall be carried into Execution againſt the Heir at Law. *Lacon* v. *Mertins, M.* 1743. 3 *Atkyns* 1.]

So, if in a Mortgage there is no Covenant for Payment, and the Mortgagor's Perſonal Eſtate is deviſed to his Wife; it ſhall not be applied to the Mortgage. 2 *Ver.* 701. *Eq. Ca.* 129.

So, if *A.* having Power to charge 500 *l.* for Payment of Debts, makes a Mortgage for that Purpoſe, and, upon an Aſſignment of the Mortgage, his Son covenants to pay; the Perſonal Eſtate of the Son ſhall not be applied. 2 *P. W.* 596.

If a Debt is recovered againſt the Heir upon the Bond of his Anceſtor, when the Executor has Aſſets; the Executor ſhall be compelled in Equity to reimburſe the Heir. *Ca. Ch.* 74. *Per Hale, Hard.* 512. 1 *Ch. R.* 156.

If

If a Man enters into an Article for the Purchaſe of Land and dies, the Money ſhall be decreed to the Heir for the Purchaſe. 1 *Sal.* 154. 2 *P. W.* (632). *Vide Aſſets, Ante,* (2 G. 1.)

So a Mortgagee ſhall be paid out of the Perſonal Eſtate, if there are Aſſets for Debts and Legacies. *Sal.* 449. *R. Ch. R.* 401.

So, if there is a Reſiduary Legatee, the Heir ſhall be aided out of the Perſonal Eſtate. *R.* 2 *Ver.* 43. *R. Eq. R.* 72.

Tho' he be the Deviſee, after the Death of the Reſiduary Legatee, and alſo Heir. *Dub.* 2 *Ver.* 470.

But if a Man is indebted by Mortgage, Stat. &c. which charge the Real Eſtate, and there are Perſonal Aſſets for other Debts; if the Mortgagee, &c. recover their Debts out of the Perſonal Eſtate, the other Creditors ſhall be relieved againſt the Heir in Equity, for ſo much as was chargeable on the Real Eſtate. *Vide Poſt,* (3 Y. 6.)

So ſhall a Legatee, where, by Extent, &c. upon the Perſonal Eſtate, no Aſſets remain for Legacies. *R.* 2 *Ca. Ch.* 5.

Or, if the Perſonal Aſſets are exhauſted by Payment of Debts, for which the Land was charged. *R.* 2 *Ca. Ch.* 117.

If the Caſe is dubious, the Heir ſhall be preferred. *D. Ca. Ch.* 7. 2 *Ver.* 571.

If a Deviſe is to a Daughter in Fee, Proviſo that the Son and Heir ſhall have the Land, if he pays 50 *l.* at ſuch a Day; if he does not pay it at the Day, and the Daughter ſells, the Heir ſhall be relieved, upon Payment afterwards, againſt the Vendee. *R.* 2 *Ca. Ch.* 1.

If a Deviſe is to *A.* and his Heirs, in Truſt to pay a Third of the Profits to his Wife in Lieu of Dower, till his Son is Twenty-one; and out of two Thirds to raiſe Portions for younger Children, and after the full Age of his Son, to him in Tail, &c. If the Son dies before the Age of Twenty-one, the Profits after the Death of the Wife and the Portions raiſed, go to the Heir at Law, his Executor, or Adminiſtrator. *R.* 2 *Ver.* 139.

If a Man deviſe to three and their Heirs, to the Uſe, or in Truſt for *A.* for Life, and his Iſſue ſeverally in Tail Male, without limiting any Uſe or Truſt of the Fee; it ſhall be decreed to his Heir at Law, and not to the Truſtees. *R.* 2 *Ver.* 644.

If a Man ſettles an Eſtate by Deed or Will, all that is not otherwiſe diſpoſed of goes to his Heir; as, if he ſettles an Eſtate in Truſt, that if his Daughter marries *A.* and has Iſſue, it ſhall be to *A.* and his Wife for their Lives, and after their Death without Iſſue, to *B.* in Tail, and for Default of ſuch Iſſue to *C.* which *B.* and *C.* are his Heirs at Law; if the Daughter has no Iſſue, whereby the Condition precedent is not performed, and *A.* cannot take for his Life, *C.* ſhall have one Moiety of the Profits, and *B.* the other, during the Life of *A.* *R. Ca. Parl.* 87.

[If one deviſes a Rent-charge to be ſold to pay Legacies amounting to 800 *l.* and if it ſells for 1000 *l.* then to pay a further legacy of 200 *l.*; if it ſells for more than 800 *l.* and leſs than 1000 *l.* the Surplus ſhall belong to the Heir as a reſulting Truſt. *Stonehouſe* v. *Evelyn,* P. 1734. 3 *P. W.* 252.]

[If there is an executory Deviſe of Lands with a Proviſo in the Will, that the Profits (beyond an Allowance) ſhall be laid up for the firſt Perſon that ſhall be intitled to the Lands when he attains Twenty-one, and the Teſtator dies, leaving no Perſon *in eſſe* to take under the Limitations; until ſuch Perſon be born, the Profits are to be looked upon as a Reſidue undiſpoſed of, and deſcend to the Heir at Law. *Hopkins* v. *Hopkins, M.* 8 *G.* 2. *C. T. T.* 44. To this Determination Mr. *Pope* alludes in his Account of *Vulture Hopkins.*]

[And if ſuch Perſon comes *in eſſe,* and dies, the Heir at Law is ſtill intitled to the Profits above the Maintenance during this Infant's Life, and to all Profits afterwards, till a Perſon comes *in eſſe,* intitled to an Eſtate for Life in Poſſeſſion. *Hopkins* v. *Hopkins, T.* 1749. 1 *Vezey* 266.]

[If *A.* ſettles Lands in *H.* to himſelf for Life, to Truſtees to preſerve, &c. to his firſt and other Sons in Tail, to *B.* for Life, to Truſtees to preſerve, &c. and to his firſt and other Sons in Tail, to the right Heirs of *A.* with Power of Revo-

cation on ſettling other Lands in *G.* of equal Value, and free from Incumbrances to the ſame Uſes; and afterwards by Will deviſes theſe Lands to *C.* for Life, and all his other Lands to Truſtees, for the Uſe of his only Daughter and Child, with Remainders over, and directs all his perſonal Eſtate to be laid out in Lands to be ſettled to the ſame Uſes; and afterwards by Leaſe and Releaſe intended as an Execution of the Revocation in the firſt Settlement, conveys Lands in *Y.* to the ſame Uſes as thoſe in *H.* but theſe Lands are not of equal Value, and are ſubject with others to a Term to raiſe 10,000*l.* this is not a good Execution of the Power of Revocation; the ſecond Deed is a Revocation of the Will as to the Lands in *Y.* thereby ſettled, and if *B.* chuſes to adhere to the Lands in *H.* he is a Truſtee for the Lands in *Y.* for Teſtator's Heir at Law, and *C.* is not intitled to any Equity againſt him. *Burgoigne* v. *Fox*, *P.* 1738. 1 *Atkyns* 575.]

[If a Man deviſes all his Freehold Lands in the Occupation of *L.* and all the Reſt of his Eſtate, conſiſting of ready Money, Jewels, Leaſes, Judgments, Mortgages, *&c.* or in any other Thing whatſoever, or whereſoever, to his Wife, yet the Reſt of Real Eſtate does not paſs. *Timewell* v. *Perkins*, *M.* 1740. 2 *Atkyns* 102.]

[If a Man deviſes to his Son *H.* all his Freehold and Copyhold in *C.* (which Copyhold I have ſurrendered to the Uſe of my Will) and dies, having ſurrendered Part of a Houſe, and not the other Part which he had purchaſed after the Surrender, only what was ſurrendered ſhall paſs, and the Cuſtomary Heir ſhall not be diſinherited of the Reſt. *Gaſcoigne* v. *Barker*, *M.* 1743. 3 *Atkyns* 8.]

[If a Man by Articles before Marriage covenants to ſettle Lands, or a Rent-Charge thereout, of 40*l.* *per Annum* on Truſtees, to the Uſe of him for Life, Wife for Life, in Bar of Dower, Remainder to the Heirs of their Bodies, and he has then no Real Eſtate, but purchaſes afterwards one of 9*l.* in *A.* and then another of 40*l.* in *B.* ſubject to an Eſtate for Life to another in an undivided Moiety, the Lands in *A.* and the Moiety in Poſſeſſion of thoſe in *B.* ſhall be conſidered as purchaſed in Performance of the Covenant, and go towards the Widow's Jointure, the Moiety not in Poſſeſſion ſhall go to the Heir at Law. *Deacon* v. *Smith*, *P.* 1746. 3 *Atkyns* 323.]

[If *A.* by Articles previous to his Marriage with *B.* covenants to lay out 2000*l.* in Land, and to ſettle on *A.* for Life, *B.* for Life, then to Truſtees to ſell and divide the Money among the Children of the Marriage, to Sons at 21, Daughters 21, or Marriage, provided no Sale be made till one of the Shares become payable; and Lands are purchaſed, Part before, Part after *A.*'s Death. *C.* the only Child attains 21 in *B.*'s Life, but never applies for a Sale, nor are the Lands conveyed to her, but ſhe lets Leaſes of them, reſerving Rent to her and her Heirs; *B.* dies, *C.* dies inteſtate, the Lands ſhall go to the Heir at Law, and not be conſidered as perſonal Eſtate. *Crabtree* v. *Bramble*, *H.* 1747. 3 *Atk.* 680.]

[If a Woman under Age gives a perſonal Legacy to her Daughter, and deviſes her real Eſtate to a Stranger, the Daughter is not obliged to make an Election, but ſhall take the Legacy under the Will, and the real Eſtate as Heir at Law, the Will as to that being void. *Herle* v. *Greenbank*, *P.* 1749. 3 *Atkyns* 695. 1 *Vezey* 298.]

[If a Man gives Legacies to his Executors, and a Copyhold to *A.* he paying his Executors 1000*l.* and gives the Reſidue of his Eſtate to a Charity, this 1000*l.* is a Charge on real Eſtate, therefore void by Statute of *Mortmain*, and the Deviſee cannot take without performing the Condition, therefore the 1000*l.* ſhall go to the Heir. *Arnold* v. *Chapman*, *T.* 1748. 1 *Vezey* 108.]

If a Man ſettles an Eſtate in Truſt for ſuch Uſes as he ſhall appoint, and appoints that the Truſtees convey to his Daughters, generally; the Daughters have only an Eſtate for Life, and the Heir ſhall have the Reverſion. *R.* 2 *Ca. Ch.* 125.

Tho' the Truſt was, for want of an Appointment, to his Son and Daughters and their Heirs; for he has made an Appointment. *R.* 2 *Ca. Ch.* 125.

So, if a Leaſe for three Lives is in Truſt for *B.* who dies; the Truſt ſhall be decreed to his Heir. *R. Ca. Ch.* 311.

If a Deviſe is of Land for fifteen Years, in Truſt for Payment of Debts; after the Debts are paid, the Reſidue of the Profits during the Years, ſhall be decreed to the Heir. *R. Cont. but a Qy. is there made. Ca. Ch.* 98. 1 *Ch. R.* 263.

[Money agreed to be laid out in Land ſhall be taken as Land, and go to Heir, whether the Money was in the Hands of Truſtees, or remained in the Hands of the Covenantor. *Lechmere* v. *E. Carliſle, M.* 1733. 3 *P. W.* 211. *C. T. T.* 80.]

[But if the Covenantor after the Covenant purchaſes Lands in Fee-ſimple, (tho' without the Conſent of Truſtees as the Agreement required) they ſhall go as a Satisfaction *pro tanto*. *Ibid.*]

[If Money is ſettled to be laid out in Land, and afterwards all the Parties intereſted agree, that if *A.* dies before it is ſo inveſted, then it ſhall go to them, and their Executors and Adminiſtrators, according to their reſpective Intereſts, and one of the Parties dies before *A.* it ſhall go to the Heir, and not the Executor. *Oldham* v. *Hughes, M.* 1742. 2 *Atkyns* 452.]

[But where there is a Truſt of Money, clearly intended to be conſidered as Money, tho' afterwards there is a Power given to the Truſtees to lay it out in Land, yet, if it is not done, it ſhall not be conſidered as Land, nor go to the Heir. *Stamper* v. *Millar, H.* 1744. 3 *Atkyns* 212.]

[So if a Man by Will directs his real Eſtate to be ſold, and the Produce together with his perſonal to pay Debts and Legacies, and one of the Legacies is void by Law, or lapſes, it goes to the reſiduary Legatee, not to the Heir at Law. *Durour* v. *Motteux, M.* 1749. 1 *Vezey* 320.]

[If a Man by Will gives all his worldly Eſtate, all his real and perſonal Eſtate to Truſtees, to pay ſeveral Annuities and other Sums out of perſonal, and, if that deficient, out of Rents and Profits of real; and as to the Reſidue of real and perſonal, to ſuch Children as his Daughter ſhould have, equally; if ſhe dies without Iſſue, to others, and directs, that, on the Death of Annuitants, their Annuities ſhall go back to the Reſidue, and go to thoſe in Remainder over, but this provided his Daughter dies without Iſſue, otherwiſe to be divided among them equally; the ſurplus Rents and Profits of the real Eſtate accumulate, and do not go to the Heir at Law; but whether to the Daughter's Children, or to thoſe in Remainder over *Q.? Gibſon* v. *Ld. Montford, T.* 1750. 1 *Vezey* 485.]

If by Articles the Portion of the Wife, and ſo much Money of the Huſband, are to be veſted in a Purchaſe, for the Uſe of the Huſband and Wife and the Heirs of their Bodies, without ſaying how the Uſe ſhall be afterwards, and both die without Iſſue before a Purchaſe; all the Money ſhall go to the Heir of the Huſband, and not to the Executor of the Wife, tho' ſhe ſurvived. *R.* 2 *Ver.* 20.

If an Heir purchaſes a prior Mortgage or Incumbrance to defend him from meſne Incumbrances; on a Bill by the meſne Mortgagees, this prior Mortgage does not aid the Heir; for he ſhall not be allowed more than the Money *bonâ fide* paid for the Purchaſe of it. *R.* 2 *Vent.* 353. 1 *Ver.* 335, 6. 464.

If a Man creates a Term in Truſtees for Portions for his Daughters to be paid at Marriage or Age of twenty-one Years, and afterwards in Truſt for his Heir, and by his Will deviſes the like Portions for his Daughters, but ſays, that his Daughters ſhall not have double Portions, and one Daughter dies under Age and unmarried; her Portion ſinks for the Benefit of the Heir. *R.* 1 *Ver.* 205, 324. *R.* 2 *Ver.* 93. *Vide Poſt*, (3 Y. 8.)

So, if the Term is for raiſing 6000 *l.* for the Iſſue with which his Wife is *privement enſeint*, if it be a Daughter; a Daughter is born, but dies; the Portion does not go to her Adminiſtrator, but ſinks for the Benefit of the Heir. *R.* 2 *Ver.* 208.

If *A.* covenants to pay 1000 *l.* to *B.* for building a new Houſe upon his Eſtate, and dies before the Houſe is built; the Heir, if there are Perſonal Aſſets, ſhall compel the Executor, or Adminiſtrator, to build the Houſe. *R.* 2 *Ver.* 322.

[If a Perſon incapable to manage his Affairs, and who is afterwards found Lunatic, at that Time lays out Part of his Perſonal in the Purchaſe of Real Eſtate with the Approbation of his only Son, the Purchaſe ſhall ſtand. *Sergeſon*, v. *Sealey, M.* 1742. 2 *Atkyns* 412.

But if a Portion is limited to be raiſed out of Land for a Daughter, without limiting any Time of Payment; if the Daughter, at her Age of Seventeen, diſpoſes of the Sum to be raiſed by her Will, the Portion ſhall be paid to the Executor of the Daughter. *R.* 2 *Ver.* 74, 352.

So, if the Portion is appointed to be paid at the Age of eighteen, or Marriage; the Daughter, after eighteen, may diſpoſe of it by her Will, tho' ſhe dies before Marriage. *R. and Affirmed in Parliament.* 2 *Ver.* 352, 354.

If a Man deviſes Lands to *A.* to pay 600 *l.* to *B.* within ſix Months after his Death, and in Default thereof to *B.* and his Heirs: *B.* dies within three Months; the Lands ſhall go by the Limitation to the Heir, and not as a Mortgage to the Executor. *R.* 1 *Ver.* 402. *Eq. Abr.* 105.

[If *A.* incumbent and patron of *B.* as to his worldly Goods, after Debts paid, diſpoſes thus; he deviſes the Advowſon, Glebe, Profits and Appurtenances, to *C.* his Mother-in-Law, willing her to ſell it as ſoon as ſhe conveniently and lawfully may to *Eaton College*, or if they don't agree, to *Trinity*, or if they don't agree, to any College, the beſt Purchaſer; and gives *C.* her Heirs, *&c.* his Freehold Lands in *O.* and after ſome ſmall Legacies, gives her the Reſidue, and makes her Executrix; there is no reſulting Truſt to the Heirs at Law of *A.* but a Deviſe of the beneficial Intereſt to *C.* with Injunction to ſell to particular Societies. *Hill* v. *Biſhop London*, *H.* 1738. and *T.* 1739. 1 *Atkyns* 618.

[If *A.* Patron and Incumbent of *S.* by Will deviſes the Advowſon to *B.* on Truſt, to preſent *W.* his Son, and then to ſell it, and after Payment of Debts, to diſtribute the Reſidue in Thirds to his Daughters, and if either die before twenty-one, or Marriage, her Third to the Son if he confirms the Will by Deed, if not, to the ſurviving Daughters; *W.* is preſented and dies before the Sale, leaving an Infant Daughter; there is no reſulting Truſt for the Heir at Law, and the Ownerſhip in Equity is veſted in the *Ceſtuique Truſt* of the Surplus, who ſhall preſent. *Hawkins* v. *Chappel*, *M.* 1739. 1 *Atkyns* 621.]

[If a Man ſeiſed in Fee of *A.* directs that it ſhall be exchanged for *B.* and for that Purpoſe deviſes it to Truſtees to make the Exchange, and to permit his Wife to enjoy *A.* till the Exchange, and then to ſettle *B.* on his Wife for Life, with Remainders to the ſame Perſons to whom he had limited other Manors by his Will, whereby he has deviſed all his Real Eſtates to Truſtees, and the Exchange cannot be made; the Heir at Law of the Teſtator, and of the ſurviving Truſtee for *A.* ſhall not have *A.* but the Perſon intitled under the Will to the other Manors ſhall have it. *E. Coventry* v. *Coventry*, *T.* 1742. 2 *Atkyns* 366.]

[The Court will not declare a Will well proved, where the Heir at Law is not before the Court, tho' he cannot be found; but it will decree a Sale. *French* v. *Baron*, *H.* 1740. 2 *Atkyns* 120.]

[If an Heir at Law Defendant admits the Will that diſinherits him, he is not intitled to inſpect the Deeds of the Eſtate. *Potter* v. *Potter*, *T.* 1749. 3 *Atkyns* 719.]

[If a Man by Will deviſes his Land to his younger Son, and gives a Contingent Legacy to *A.* who becomes his Heir at Law, with expreſs Condition not to diſpute the Will, which is not duly executed to convey Lands, *A.* when of Age ſhall make Election of the Legacy or the Lands. *Boughton* v. *Boughton*, *T.* 1750. 2 *Vezey* 12.]

[If a Man deviſes that till *A.* attains twenty-one, or marries, her Mother *B.* ſhall receive the Rents, and pay *A.* 300 *l.* a Year, and retain 900 *l. per Annum* to herſelf, and to account with *A.* if ſhe attains twenty-one, or marries; if *A.* dies before either, then to *C.* his Niece and Heir at Law; the Court will not appoint a Receiver on the Prayer of *C.* but (*Semb.*) will grant Injunction to ſtay Waſte. *Knight* v. *Dupleſis*, *T.* 1751. 2 *Vezey* 360.]

(3 Q.) Ideot.

Vide Ideot, (C).

[THE Power of Juſtices of Peace does not extend to Lunaticks, whoſe Relations are in a Condition to apply to Chancery. *Anon.* *T.* 1740. 2 *Atkyns* 52.]

If

If a Commiſſion is granted to *A.* *Chancery* at Diſcretion may afterwards commit the Cuſtody to another. *Semb.* 1 *Ver.* 262.

But will not change it, upon a Petition by the next of Kin, becauſe that the Inheritance may deſcend to the Committee, or that the Maintenance is too large. 2 *P. W.* 263.

[Notice of paſſing Accounts of Lunatick's Eſtate ſhould always be given to ſuch Relations as would be intitled to a Share if he died inteſtate; but they are not allowed Coſts of Attendance unleſs for Special Cauſe. *Ex parte Wright*, *T.* 1750. 2 *Vezey* 25.]

[If a Lunatick has Eſtates, both in *England* and *Scotland*, a Proportion from each ſhould be allowed for his Maintenance. *M. Annandale* v. *Marchioneſs of Annandale*, *T.* 1751. 2 *Vezey* 181.]

[The Court will (on Circumſtances) order the Bond given by Committee to be delivered up, and leſs Security taken. *Ex parte Northleigh*, *T.* 1755. 2 *Vezey* 673.]

[So, will order it to be delivered up, on a greater Security being given; but ſuch Applications are not encouraged, as the Lunatick might be without Remedy for the Time paſt. *Ex parte Pereira*, *T.* 1755. 2 *Vezey* 674.]

A Committee cannot make an Incumbrance upon the Eſtate of an Ideot, without an Order of Court, by Mortgage or otherwiſe; for he has but an Eſtate at Will. 1 *Ver.* 262.

[Committee of a Lunatick's Real Eſtate may cut down Timber on it for Repairs; and if they have bought Timber, they ſhall make good the Money to the Perſonal Eſtate. *Ex parte Ludlow*, *T.* 1742. 2 *Atkyns* 407.]

So, if *A.* before his Lunacy makes a Mortgage, the Committee cannot join in an Aſſignment for a greater Sum. *R.* 1 *Ver.* 262.

So he cannot make Leaſes. 1 *Ver.* 262.

Nor demand an Allowance for Improvement of the Eſtate by building upon it. 1 *Ver.* 263.

If *A.* is found a Lunatick from ſuch a Day, without Intervals, all Alienations by him, after that Day ſhall be avoided. 2 *Ver.* 678. *Vide* 2 *Ver.* 414.

So, a Purchaſe from him at an Under-value, tho' confirmed by Fine and Recovery, upon Repayment of ſo much as was duly advanced with Intereſt. 2 *Ver.* 678.

[To keep a Commiſſion of Lunacy unexecuted for any long Time is a Contempt. *Anon.* *T.* 1740. 2 *Atkyns* 52.]

[If there is a Miſbehaviour in executing an Inquiſition of Lunacy, the Court may quaſh it, and direct a new Commiſſion; but a *melius inquirendum* is only grantable on the Part of the Crown, who cannot traverſe as a Subject can. *Ex parte Roberts*, *M.* 1743. 3 *Atkyns* 5.]

[If the Lunatick appears better on an Inſpection after the Inquiſition taken, the Court will grant a Traverſe, and ſuſpend the Grant of the Cuſtody till further Order. *Ibid.*]

[Whether the Party can have a Traverſe without applying to this Court? *Q.* *Vide Cutt's Caſe*, *Ley* 86. but without Leave of this Court the Cuſtody cannot be ſuſpended. *Ibid.*]

[If the Inquiſition be to inquire whether *A.* is a Lunatick, or enjoys lucid intervals, ſo that he is not ſufficient for the Government of himſelf and his Affairs, and the Return is, that *A.* is, from the weakneſs of his Mind, incapable of governing himſelf, and his Lands and Tenement, it is an illegal and void Return, and the Inquiſition ſhall be quaſhed. *Ex parte Barnſley*, *T.* 1744. 3 *Atkyns* 168.]

[The above Return is good in Subſtance, tho' informal; and if a ſecond Inquiſition is returned that he is of *unſound Mind*, ſo that he is not ſufficient to the Government, *&c.* it is good, and after thoſe two the Court will not grant a Traverſe. *Ex parte Barneſley*, *T.* 1744. 3 *Atkyns* 184.]

[Not only the Lunatick, but the Heir of the Lunatick is bound upon the Traverſe of the Inquiſition. *Ex parte Roberts*, *H.* 1745. 3 *Atkyns* 308.]

[The Chancellor will on Application make a proviſional Order, as to the Effects of a ſuppoſed Lunatick, till the Lunacy is fully determined. *Ex parte Heli*, *P.* 1748. 3 *Atkyns* 635.]

[The Court will direct one found *non compos* before a foreign Jurisdiction (as the Senate of *Hamburgh*) Heir to a Mortgagee, to convey, under 4 *G.* 2. *c.* 10. *Ex parte Otto Lewis*, T. 1749. 1 *Vezey* 292.]

[If the ſuppoſed Lunatick is Abroad, the Commiſſion may be directed to the County in *England* where his Manſion-Houſe and Eſtate lies. *Ex parte Southcot*, T. 1751. 2 *Vezey* 401.]

[The common Form is not of Neceſſity to be obſerved. *Ibid.*]

[The Commiſſioners and Jury have a Right to inſpect the Perſon, but they are not obliged ſo to do. *Ibid.*]

[Not being able to anſwer the moſt common Queſtion touching Figures, is not Ground for a Commiſſion, if the Party gives rational Anſwers to other Queſtions. *Ld. Donegal's Caſe*, P. 1752. 2 *Vezey* 407.]

[A Man's appearing not Lunatick at one Time does not prevent Application afterwards; but if there has been a Perſonal Examination on the firſt, the Chancellor will not proceed without new Inſpection. *Ibid.*]

[If a Man is found an Ideot *for ſo many Years paſt*, it is good; for finding him an *Ideot* implies from his Birth, the Reſt is Surpluſage. *Ibid.*]

[Tho' a Man is very weak, and a Petition for Commiſſion is preſented in the Name of Infants, whoſe Remainder may be thereby defeated, the Court will not grant Commiſſion, and the Court will grant Relief againſt Deeds or Will obtained from a Man againſt whom it will grant a Commiſſion. *Ibid.*]

[A Petition to ſuperſede a Commiſſion, muſt be in the Name of the Perſon who had recovered ſound Mind. *Ex parte Stanley*, T. 1750. 2 *Vezey* 25.]

(3 R) Infant.

(3 R. 1.) How he ſhall ſue.

Vide Pleader, (2 C. 1.)

AN Infant ſhall have the ſame Relief in *Chancery* as another Perſon.

And may ſue by *prochien Amy*, or Guardian. *Vide Practical Regiſter in Chancery* 194.

Or in Perſon. *Vide Practical Regiſter in Chancery* 194.

So a Bill may be exhibited by any one, as *prochien Amy* to an Infant *en ventre ſa mere*, and he ſhall thereupon have an Injunction to ſtay Waſte. *Eq. Abr.* 71. 2 *Ver.* 711.

So a Bill for an Infant by a *prochien Amy*, without the Conſent of the Infant, ſhall be allowed; for it is at his Peril. *Mich.* 1713. *Eq. Abr.* 72.

[*Prochien Amy* need not be a Relation, but then he muſt be a Perſon of Subſtance, becauſe liable to Coſts. *Anon. H.* 1737. 1 *Atkyns* 570.]

So a Stranger may demand an Account for an Infant, againſt his Guardian, during his Minority, tho' the Infant himſelf cannot have an Account againſt him, till his full Age. 2 *P. W.* 119.

[If a Man leave a Perſonal Eſtate between his Wife, whom he makes Executrix, and two Infant Children, and a Relation, as *prochien Amy*, files a Bill againſt the Wife for an Account; on Affidavit of other Relations, that the Suit is not for Infants Benefit, the Court will refer it to a Maſter, and on his Report to that Effect, ſtay Proceedings. *Da Coſta* v. *Da Coſta*, P. 1732. 3 *P. W.* 140.]

If there be a Miſtake by the Offer of an Infant in his Bill; the Court will take Care of him, and direct an Amendment of the Bill. 2 *P. W.* 386, 7.

[On extraordinary Circumſtances, the Court will give an Infant Plaintiff a Day to ſhew Cauſe. *Bennet* v. *Lee*, *H.* 1742. 2 *Atkyns* 529.]

But when an Infant ſues, he ſhall have no other Privilege, than a Man of full Age; for he ſhall pay Coſts; and if he claims by a Will, there is no need of Proof as to him himſelf. 2 *P. W.* 519.

[On a Bill filed by *prochien Amy*, an Infant pays no Coſts. *Turner* v. *Turner*, T. 12 *G.* *Str.* 708.

N. B.

N. B. The contrary was ordered at firſt, whereupon Plaintiff obtained a Rehearing as to the Point of Coſts, when it was ordered as here reported. This is probably the Reaſon why this Caſe is wrong reported in 2 *P. W. Select Caſes in C. &c.*]

(3 R 2.) How he ſhall be ſued.

If an Infant is ſued, the Court will appoint a Guardian to defend him. *Vide Practical Regiſter in Chancery* 194, 5. *Vide Pleader,* (2 C. 2.)

Or he may anſwer in Perſon. *Vide Practical Regiſter in Chancery* 194.

[An Infant when he comes of Age is intitled to put in a new Anſwer, and make a better Defence if he can. *Bennet* v. *Lee, H.* 1742. 2 *Atkyns* 529.]

[An Infant may alſo apply to put in a better Anſwer during his Infancy, where he might not be able to come at the ſame Evidence when he ſhall be of Age; as if the neceſſary Witneſſes are old. *Ibid.*]

And may be compelled to the Performance of a Decree. *Vide Practical Regiſter in Chancery* 195.

And ſhall be committed, if he diſobey it. *Ibid.*

If he ſues by *prochien Amy*, and after his full Age he does not proceed, whereby his Bill is diſmiſſed; he ſhall pay Coſts, and take his Remedy againſt his *prochien Amy*. 2 *P. W.* 297.

(3 R. 3.) What Things he ſhall be decreed to do, during his Infancy.

If Land is conveyed by Truſtees to an Infant, he ſhall be compelled to perform the Truſt, during his Minority. *Semb.* 1 *Ver.* 343. (3 R. 3.) To perform a Truſt.

So, if Land is given to him for Payment of an Annuity to another, he ſhall be compelled to pay it, and the Arrearages. *Tot.* 171.

So, if there be a Bond for the Money of *A.* in the Name of an Infant; upon Payment to *A.* the Infant ſhall be ſtayed from ſuing.

So, by the *St.* 7 *Ann.* 19. An Infant Truſtee may, on Petition and Reference to a Maſter, be ordered by the Court to aſſign his Truſt.

[By *ſtat.* 4 *G.* 3. *c.* 16. the Powers of 7 *Ann. c.* 19. are granted to the Courts in the Counties Palatine and *Wales*, with reſpect to Lands in them ſeverally.]

[The *ſtat.* 7 *Ann. c.* 19. extends only to plain and expreſs Truſts, not to ſuch as are implied or conſtructive only. *Goodwyn* v. *Liſter, M.* 1735. 3 *P. W.* 387.]

[Therefore if *A.* covenants to convey, dies, and the Premiſſes deſcend to *B. C.* and *D.* an Infant; *B.* and *C.* ſhall convey immediately, and a Day be given to *D.* to ſhew Cauſe within ſix Months after he is of Age. *Ibid.*]

[Or if Lands in Fee are deviſed to Infant, charged with Debts and Legacies, the Infant ſhall not be decreed to join in Sale of ſo much and ſuch Part as ſhall be ſufficient and fit to be ſold to pay, but the Maſter ſhall report, and the Infant convey when of Age, unleſs he ſhew Cauſe in ſix Months. *Anon. T.* 1730. 3 *P. W.* 389.]

[An Infant Truſtee ſhall not be decreed to convey, if there is a Doubt whether he has an Intereſt of his own in the Eſtate, unleſs on proper Suit. *Hawkins* v. *Obeen. T.* 1754. 2 *Vezey* 559.]

And to levy a Fine, if it be neceſſary for an effectual Aſſignment; as, if ſhe be a *Feme Covert*. (*Vide Comyns's Reports* 615.)

[The Court will order an Infant who is a *Feme-covert*, and Heir of a Mortgagee in Fee, to convey by Fine, the Huſband conſenting by Council, for Affidavit of Service on him is not ſufficient. *Ex parte Mairt, P.* 1747. 3 *Atk.* 479.]

[The Court will order an Infant Truſtee to convey by common Recovery; for the Act is general, that he ſhall convey as the Court direct. *Ex parte Johnſton, T.* 1747. 3 *Atkins* 559.]

[On Application for an Infant Truſtee to join in ſuffering a common Recovery, the Court will order all Parties to concur in all neceſſary Acts for the Infant's ſuffering it, as it is doubtful whether he can do it without a privy Seal. *Ex parte Bowes, T.* 1744. 3 *Atkyns* 164]

But this ought to be done, where the Truſt is manifeſt; for if the Truſt is not in Writing, there ſhall be a Decree upon a Bill. 2. *P. W.* 549.

So a Decree for the Sale of an Eſtate for Payment of Debts, binds Infants. 1 *Ver.* 295.

So an Infant ſhall be foreclоſed, if he does not redeem a Mortgage during his Infancy. 2 *Vent.* 351.

But if the Title is dubious, he ſhall not be foreclоſed, till his full Age; for no Money can be expected on the Aſſignment. *Ibid.*

And if he be foreclоſed, he ſhall have a Day allowed him, after his full Age. 1 *Ver.* 295.

So, if he be decreed to join in a Sale, he ſhall have a Day to ſhew Cauſe to the contrary, after his full Age. 2 *Ver.* 429.

So, if it be decreed that any one ſhall hold and enjoy Land againſt him. 2 *Ver.* 479.

* 2d Part of 2 *Mod. Ca.*

A Decree for the confirming or avoiding of a Will, where an Infant is Heir or Deviſee, ſhall be final and binds the Infant. *R. Eq. Ca.* 128.*

[The Inheritance of an Infant is never bound by any diſcretionary Act of the Court, tho' as to Perſonal Things it has been done. *Taylor* v. *Philips*, *T.* 1750. 2 *Vezey* 23.]

(3 R. 4.) To do his Duty.

So an Infant ſhall be compelled to give a Diſcharge for Money paid to him.

So an Infant Executor ſhall be compelled to the Payment of Debts.

If *A.* gives a Lottery Ticket upon Condition, that the Donee ſhall divide all above 20 *s.* with *B.* the Donee ſhall be decreed to divide, tho' he is an Infant. *R.* 2 *Ver.* 560.

(3 R. 5.) Or a Thing for his Advantage.

So an Infant ſhall be compelled to the Performance of his Agreement, if he had an Advantage by the Means of ſuch Agreement; as, if the Eldeſt Son promiſe to his Father to give 100 *l.* to the Younger Son, if the Father will deſiſt from making a Settlement, which he intended on the Younger Son, by which Means, the Father does deſiſt from the Settlement; tho' the Eldeſt Son was an Infant, he ſhall be compelled to pay the 100 *l.*

So Equity uſually regards that Intereſt, which is moſt beneficial for the Infant. 1 *Ver.* 252.

[If an Eſtate is conveyed in Truſt, to be ſold to pay Incumbrances then affecting it, *&c.* the Reſidue in Truſt for Grantor and his Heir, and Bill be brought by a ſubſequent Bond-Creditor to have the Eſtate ſold, prior Incumbrances paid, and then his Debt; and the Heir by Anſwer inſiſts, that being an Infant the Parol ought to demur, tho' it is to the Infant's Prejudice, and his Counſel would waive it, yet as it has been mentioned the Court cannot avoid ordering it. *Scarth* v. *Cotton*, *T.* 9 *G.* 2. *C. T. T.* 198.]

[But if *A.* before Marriage covenants with Truſtees to pay them a Sum to be laid out in Lands for *B.* his Wife's Jointure, and he afterwards ſettles certain Lands for her Jointure, and by Will confirms it, and directs them after her Death to be ſold, and the Money divided between *C.* an Infant his Heir at Law and five others, and *B.* brings Bill refuſing the Lands ſo ſettled, and inſiſting on the Performance of the Covenant before Marriage, and that theſe Lands ſhall be ſold for that Purpoſe, and it is for the Infant's Benefit that the Lands ſhould be now ſold; the Court will decree it, as there is a Truſt to be performed, but does not mean to break in on the Rule of the *Parol*'s demurring. *Uvedale* v. *Uvedale*, *T.* 1744. 3 *Atkyns* 117.]

If an Infant by his Anſwer offers other Lands for Security of Portions to his Younger Brothers, to prevent a Sale of the Lands charged, and does not immediately upon his coming of Age retract his Offer, he ſhall be bound thereby. 2 *Ver.* 224, 5.

So Building-Leaſes, for the Advantage of an Infant, are decreed. 2 *Ver.* 225.

So an Exchange made during the Minority of an Infant, if he continues in Poſſeſſion after his full Age. *Ibid.*

But, generally, an Infant ſhall not be compelled to make good his Agreement.

[If one on coming of Age gives a Note for Liquors, *&c.* which he had before of Age, and whilſt at School, no Account being produced; the Court will order the

the Note to be delivered up, but will not injoin the Donee from ſuing at Law as for Neceſſaries. *Brooke* v. *Gally*, *P.* 1746. 2 *Atkyns* 34.]

So he ſhall not be compelled to pay a Debt out of Real Aſſets, during his Minority. *Dub.* 1 *Ver.* 428.

But a Decree againſt him during his Infancy, ſhall not be avoided, if it was not obtained by Colluſion, tho' not equal. *P. W.* 734.

(3 R 6.) Maintenance of Infants.

If an Eſtate is deviſed, or ſettled, for the Benefit of Children, who are Infants, the Court may allow how much ſhall be applied for their Maintenance. *Vide* 2 *Ver.* 236.

[The Court may appoint a Guardian, and Maintenance, on Petition, tho' no Cauſe is depending. *Ex parte Odel*, *T.* 1731. *Ex parte Peploe*, *T.* 1734. *Tenham* v. *Barret*, *M.* 1723. and *P.* 1724. *Ex parte Whitfield*, *T.* 1742. 2 *Atkyns* 315.]

[The Court will not confirm a teſtamentary Guardian, nor refer an Infant's Maintenance to a Maſter on Petition; there muſt be a Bill. *Q.* *Ex parte Riccards*, *T.* 1747. 3 *Atkyns* 518.]

[A Receiver of an Infant's Eſtate is never appointed when no Bill is depending; but if it is only filed, there may be an Application for one, on Infant's Behalf, *Anon.* *P.* 1738. 1 *Atkyns* 489, 578. *Ex parte Whitfield*, *T.* 1742. 2 *Atkyns* 315.]

[Allowance of Maintenance to a Guardian demanded afterwards, muſt be in regard to what the Infant had, at the reſpective Times for which ſuch Maintenance is to be. *Chaplin* v. *Chaplin*, *T.* 1735. 3 *P. W.* 365.]

And Maintenance ſhall be allowed, by Conſent of the Relations, tho' there is no Proviſion for it; for the Court by natural Equity has Power to make an Allowance. *R.* 2 *Ver.* 236.

So, if there is an Elder Son an Infant, and other Younger Children, who have no Proviſion; the Court will allow a more ample Maintenance to the Guardian, by which the Younger Children may be maintained. 2 *P. W.* 22.

[Where there is a numerous Family of Children, the Court will order a liberal Allowance for an Eldeſt Son, to enable him as Head of the Family to maintain his Brothers and Siſters; but if he is conveyed clandeſtinely to a Seminary Abroad, they will allow nothing, but direct the Rents and Profits to he laid out for his Benefit. *Petre* v. *Petre*, *P.* 1747. 3 *Atkyns* 511.]

So, if a Sum of Money is bequeathed to an Infant at ſuch an Age, or to be paid at his full Age; the Intereſt ſhall be applied for his Maintenance in the *Interim*. *R.* 1 *Ch. R.* 265. 2 *P. W.* 22. *Vide Poſt*, *Legacy*, (3 Y. 9.)

And if no Intereſt is payable, the Court will direct Part of the Principal to be paid, for which Intereſt ſhall be deducted by him, who pays it, out of the Reſidue on Payment thereof. 2 *P. W.* 23.

But if the Eſtate be ſmall, the lower Intereſt ſhall be paid. 2 *P. W.* 22.

So, if a Term is created to raiſe Maintenance, and the Eſtate is incumbred with a Mortgage, which the Rents cannot pay; a Mortgage of the Term ſhall be decreed. 1 *P. W.* 490.

But this ſhall not be done without Neceſſity, or if the Parent is able to maintain the Infant. 1 *P. W.* 493. [*Jackſon* v. *Jackſon*, *P.* 1737. 1 *Atkyns* 513.]

But if a Legacy is given to an Infant, his Guardian cannot diſburſe out of the principal Sum for his Maintenance. *Vide Ante*, (3 O. 1, 2.)

So, if 500 *l.* is deviſed to be paid out of Land veſted in Truſtees by Deed, for the Portion of a Daughter at her full Age, and if ſhe dies before, to another Perſon; tho' nothing is deviſed beſides that, and ſhe cannot have the Intereſt, yet nothing ſhall be deducted out of the Principal for her Maintenance, in reſpect of the Deviſe over. *R. Ca. Ch.* 249.

[If a Freeman of *London* deviſes a ſixth Part of his cuſtomary Eſtate to his Daughter, and directs it to remain in the Mother's Hands till twenty-one, or Marriage, and deviſes the Reſidue of his Eſtate to his Wife, deſiring her to take

the Trouble and *Expence* of maintaining her till twenty-one, or Marriage, her Maintenance ſhall be paid out of the Produce of the Capital of her Orphanage Part, then out of the Reſidue of the Legatory Part. *Coomes* v. *Elling*, *H.* 1747. 3 *Atkyns* 676.]

(3 S) Intereſt for Money.

(3. S. 1.) At what Time it commences.

IF Money is borrowed upon Mortgage, Bond, Note, *&c.* the Intereſt thereof commences upon the Execution of the Security, and Loan of the Money. *Vide Eq. Abr.* 286.

If Portions are provided for Children, and no Maintenance given till the Time of Payment, the Intereſt of the Portions ſhall be allowed for Maintenance.

Or, if a Woman has Land for her Jointure, out of which they are payable; ſhe ſhall maintain her Children in the *Interim*. *Eq. R.* 93.

So, if Money is detained by Wrong, Intereſt ſhall be paid. *Per Cowper*, 1 *P. W.* 396.

If a Legacy is given, with a certain Day limited for the Payment, Intereſt ſhall be paid from the Day limited, if the Legacy is not then paid. *Tr. Eq.* 119. *Vide Sal.* 415, 16. *Eq. Abr.* 286. *Vide Poſt*, (3 Y. 9.)

[If *A.* by Will creates a Term for Payment of Debts and Legacies, and orders them to be paid in five Years; and by Codicil gives the ſame Eſtates to Truſtees to pay 300 *l. per Annum* to his Wife, and with the Surplus to pay Debts and Legacies with all Speed; a Legacy ſhall bear Intereſt from the End of the five Years, a Debt from the Time it is liquidated. *Lloyd* v. *Williams*, *M.* 1740. 2 *Atkyns* 108.]

[If a Truſt is created for Payment of Debts, if the Land does not yeild annual Profits, *all* Debts do not carry Intereſt, but *ſome* ſhall. *Ibid.*

If no Time is limited, Intereſt ſhall commence from the exhibiting of a Bill for it; or, if the Deviſee is an Infant, from a Year after the Death of the Teſtator. *Tr. Eq.* 119. *Vide Poſt*, (3 Y. 9.)

[If a Truſt is created to raiſe 20,000 *l.* to be applied to certain Purpoſes, and the Reſidue to *A.*; he dies, and afterwards Act of Parliament declares ſaid 20,000 *l.* to be Perſonal Eſtate of *A.* liable to his Debts, the Reſidue to be diſtributed; and afterwards there is a Decree for Payment of Debts, and one-third of Reſidue to be paid to *A.*'s Widow, and two-thirds to be placed out for his Daughter an Infant, and this is neglected by the Widow's ſecond Huſband (who is in Poſſeſſion) for many Years, Intereſt ſhall be paid from the Decree. *E. Pomfret* v. *Ld. Windſor*, *T.* 1752. 2 *Vezey* 472.]

If a Legacy is payable out of the Reverſion of an Eſtate for the Life of another, tho' it cannot be raiſed immediately, whenever it can be raiſed, the Intereſt ſhall be paid from the Time, when the Legacy was directed by the Will to be paid. *R. Eq. R.* 89.

[If the Truſt of a Reverſionary Term after a Grandfather's Death in Marriage-Settlement is to raiſe Portions for Daughters, payable at twenty-one, or Marriage; and in the Settlement there is Proviſion for Maintenance for Daughters, which is not to be raiſed till after the Grandfather's Death, but no ſuch Exception as to the Portions, the Portion veſts from the Marriage, and bears Intereſt from that Time, in the Life of the Grandfather. *Lyon* v. *D. Chandos*, *H.* 1746. 3 *Atkyns* 416.]

If a Legacy is given by a Father, to be paid at a future Day, Intereſt ſhall be paid in the *Interim*; for by the Law of Nature he ought to maintain his Son, *&c.* in the mean Time. *Tr. Eq.* 119.

Otherwiſe, if given by a Stranger. *Ibid.*

[If a Man having an Eſtate in the Funds, and Shares of Ships, deviſes 4000 *l.* to Truſtees, to be applied as he ſhall appoint, and by Codicil appoints it to the Uſe of *A.* aged five, his Maintenance and Education to be paid out of the Intereſt,

tereſt, Intereſt ſhall commence from Teſtator's Death. *Beckford* v. *Tobin*, *M.* 1749. 1 *Vezey* 308.]

[If ſuch Legacy is not ſeparated from the Bulk of the Eſtate, and it appears that if it had, and had been laid out, it would not have produced more than 4 *l. per Cent.* the Court will give only 4 *l. per Cent.* tho' charged on Perſonal. *Ibid.*]

[If a Portion is to be paid at Twenty-one, with Intereſt, at 5 *l. per Cent. per Annum*, from the Death of the Father to the Payment thereof, the Intereſt ſhall be paid annually, and not accumulate till the Portion is payable. *Boycot* v. *Cotton*, *M.* 1738. 1 *Atkyns* 552.]

If an Annuity is deviſed or agreed to be paid at *Mich.* and *Lady-Day*; if there is an Arrear, Intereſt ſhall be decreed from the Day of Payment. *R.* 1 *P. W.* 543.

If an Account is ſtated by a Maſter, Intereſt ſhall be paid for the Balance. 1 *P. W.* 480, 653.

But if the Debt is not aſcertained till the Maſter's Report, Intereſt ſhall be allowed only from the Report confirmed. 1 *P. W.* 377.

If a Loan is made beyond Sea, the ſame Intereſt ſhall be paid as there, deducting the Charge of the Return. 1 *P. W.* 396.

[If a Bond is given in *Ireland*, tho' for a Debt contracted in *England*, it ſhall carry *Iriſh* Intereſt. *Connor* v. *E. Bellamont*, *T.* 1742. 2 *Atkyns* 382.]

Yet where a Portion was charged upon an Eſtate in *Ireland* by a Settlement and Will made in *England* between Parties here; it was decreed to be paid with *Engliſh* Intereſt, without Deduction for the Charge of the Return. 1 *P. W.* 696. *Vide* 2 *Ver.* 395.

[If a Contract is made in *England* for a Mortgage of a Plantation in the *Weſt Indies*, only legal Intereſt ſhall be paid, and if there is a Covenant for more, tho' only the Intereſt where the Land lies, it is Uſury; therefore the Place where the Contract is made, not where the Security lies, or where the Debt was contracted, determines the Rate of Intereſt. *Stapleton* v. *Conway*, *P.* 1750. 3 *Atkyns* 727. 1 *Vezey* 427.]

[If Money is due on Covenant at 6 *l. per Cent.* and decreed, and a Report aſcertains the whole Sum and Intereſt thereof at the then legal Intereſt of 6 *l. per Cent.* and afterwards Bill is brought for Payment of this accumulated Sum and Intereſt, the Intereſt on the Principal ſhall be at 6 *l. per Cent.* to the Time it is paid, on the Intereſt at 6 *l. per Cent.* till the Reduction of Intereſt, and then at 5 *l. per Cent.* *Aſtley* v. *Powis*, *T.* 1750. 1 *Vezey* 483, 495.]

[If a Father on his Son's Marriage covenants to give or leave him 4000 *l.* and Intereſt is not mentioned, he ſhall have Intereſt at 5 *l. per Cent.* from the Father's Death. *Swynfen* v. *Scawen*, *T.* 1748. 1 *Vezey* 99.]

[A Legacy for Mourning out of Perſonal Eſtate carries Intereſt at 5 *l. per Cent.* *Ibid.*]

[If a Mortgage carries Intereſt at Four and a Half, with Proviſo, that if Half Year's Intereſt is paid before the Third Quarter becomes due, the Mortgagee will accept of 4 *l.* if the Mortgagor fails Payment, the Court cannot relieve him againſt the Half *per Cent.*; otherwiſe, if it was made at 4 *l. per Cent.*; with Proviſo, that if not paid at the Time it ſhould be more, for that is but a *Nomine Pœnæ*. *Nicholls* v. *Maynard*, *T.* 1747. 3 *Atkyns* 519.]

[If a ſtated Sum is reported due for Principal and Intereſt on a Mortgage on an Eſtate to be ſold, and there are other Mortgagees and Creditors, it ſhall carry Intereſt at 4 *l. per Cent.* only, from confirming the Report, tho' the Mortgage was at 5 *l. per Cent.* *Harris* v. *Harris*, *H.* 1750. 3 *Atkyns* 722.]

[If Portions are by Will charged, firſt on Perſonal, and then on Real Eſtate, with Intereſt for their Maintenance; ſo far as the Perſonal is deficient, the Intereſt ſhall be at 4 *l. per Cent.* *Ld. Trimleſtown* v. *Colt*, *T.* 1749. 1 *Vezey* 277.]

[If an Account is directed of Money which by Marriage Articles is to be laid out in Land, Part for a Jointure, and Decree directs it ſhould anſwer Intereſt, without ſaying at what Rate, it ſhall be only 4 *l. per Cent.* *Denton* v. *Shellard*, *H.* 1750. 2 *Vezey* 239.]

(3 S. 2.) No Intereſt beyond the Penalty.

But, generally, Intereſt ſhall not be allowed in Equity, beyond the Penalty of the Security; and the Party makes the Penalty the Meaſure of his Damage for Nonpayment. *Tr. Eq.* 118. *Eq. Abr.* 288.

Yet Intereſt has been carried beyond the Penalty, where the Bond is only a collateral Security for the Money. *Tr. Eq.* 118.

Or the Party hath made great Advantage by the Detainer. *Ibid.*

[Intereſt beyond the Penalty was decreed to be paid. *Elliot* v. *Davis. in Sc. T.* 1718. *Bunb.* 23.]

[A Creditor on a Judgment is not confined to the Penalty, but may carry the Computation of Intereſt beyond it. *Godfrey* v. *Watſon, P.* 1747. 3 *Atkyns* 517.]

(3 S. 3.) Nor Intereſt upon Intereſt.

So, generally, Intereſt upon Intereſt ſhall not be allowed. *Tr. Eq.* 119. *Vide Poſt*, (3 S. 4.)

And if Intereſt is computed for Intereſt, tho' the Debtor agreed to pay more, if not paid within three Months, he ſhall be aided, where there is only a ſmall Arrear. 1 *P. W.* 653.

[If a Mortgagee, where the Intereſt is Four and a Half *per Cent.* at every ſix Months turns the Intereſt into Principal, and Charges 5 *l. per Cent.* on the Intereſt ſo turned into Principal, and when the Mortgage is paid off with ſix Months Notice, charges double Intereſt for the laſt ſix Months, on pretence it was ſo agreed for Services done as a Counſel, the Mortgagor ſhall be relieved. *Thornhil* v. *Evans, T.* 1742. 2 *Atkyns* 330.]

[If Arrears of Intereſt are due when a Mortgage is paid, the Mortgagee ſhall never be allowed Intereſt for this Intereſt. *Ibid.*]

[If Intereſt is not regularly paid, it may upon Agreement be turned into Principal; but then it muſt be done fairly, and is generally on the Advance of freſh Money, and even then it is reckoned a Hardſhip on the Mortgagor, and an Act of Oppreſſion. *Ibid.*]

So no Intereſt ſhall be allowed for a Sum due, tho' the Party by Letter prayed Forbearance. *R.* 1 *P. W.* 653.

But if a Mortgagee aſſigns with the Aſſent of the Mortgagor; the Aſſignee ſhall have Intereſt for the Sum by him paid for Principal and Intereſt. *Tr. Eq.* 120.

So, tho' the Aſſignment is made, without the joining of the Mortgagor. *Dub. Tr. Eq.* 120.

[If a Mortgage is aſſigned for as much as the Principal and Intereſt come to, but without Privity of Mortgagor, Intereſt ſhall be carried on only on the Principal; but if the Mortgagee had applied for Payment, and the Mortgagor refuſed it, Intereſt ſhall be carried on, on both Principal and Intereſt, whether the Mortgagor join or not. *Anon. In Sc. P.* 1719. *Bunb.* 41.]

So Intereſt ſhall be allowed for the Balance of a ſtated Account, tho' Intereſt is computed in the Account. *Tr. Eq.* 120.

So, for the groſs Sum payable on a Mortgage, tho' it includes the Intereſt. *Semb. Tr. Eq.* 120.

[Subſequent Intereſt ſhall be allowed for the whole Sum reported due for Principal, Intereſt, and Coſts, on a Mortgage, and *Semb.* on any other Debt. *Bickham* v. *Croſs, T.* 1752. 2 *Vezey* 471.]

(3 S. 4.) When Intereſt ſhall not be allowed.

Chancery has Power, upon Circumſtances, to abate or diſcharge Intereſt due. *Ca. Ch.* 106.

As, after Tender and Refuſal of the Mortgage Money, the Mortgagor ſhall be diſcharged of the Intereſt, upon an *Affidavit* that he made no Advantage afterwards of the Money. *Vide Poſt*, (4 A. 6.)

So,

So, if Money due upon Mortgage, &c. is paid to the Scrivener, who put out the Money, but had not the Security, (which is not a good Payment;) the Mortgagee ſhall have the Principal, without Intereſt. *Ca. Ch.* 94, 111.

[Purchaſe-Money does not bear Intereſt from the Time of executing the Articles, but the Conveyance, and then not if Vendor has not let Vendee into Poſſeſſion; and after Poſſeſſion the Court will give ſuch Intereſt as is agreeable to the Nature of the Land. *Blount* v. *Blount*, *P.* 1748, 3 *Atkyns* 636.]

[The Advantage a Purchaſer receives from the wearing out of Lives is not taken into Conſideration as a Reaſon for him to pay Intereſt. *Ibid.*]

So, where a Debt is not well founded, the Principal may be decreed, without Intereſt. *Ca. Ch.* 106.

As, where a Bond was given to an Officer in the Army, for his Surrender. 1 *Ver.* 99.

Where a Note is given for Goods ſold, &c.

If a Bond, &c. is given in *Turkey*, &c. Intereſt ſhall be computed as payable there. *Tr. Eq.* 121.

So, if a Bond is given in *England*, for Money due in *Ireland*, the Intereſt ſhall be as payable in *England*. 2 *Ver.* 395. *Vide* 1 *P. W.* 696.

So, if a Legacy is demanded by an Infant, and the Defendant, by his Anſwer, ſays, that he was always ready to pay, but that he could not be indemnified, by reaſon of the Infancy of the Plaintiff, and offers to pay; it ſhall be paid without Intereſt. *R. Ch. R.* 264.

[Intereſt ſhall not be allowed on the Arrears of an Annuity, where the Annuitant has not entered for Default of Payment. *Robinſon* v. *Comming*, *T.* 1742. 2 *Atkyns* 409.]

[If a Man, by Deed or Will, creates a Truſt Term for Payment of Debts and Legacies after his Death out of Real Eſtate, ſo far as his Perſonal Eſtate is not ſufficient, ſimple Contract Debts do not carry Intereſt. *Barwell* v. *Parker*, *T.* 1751. 2 *Vezey* 363.]

So upon a Mortgage, if it is agreed that Intereſt ſhall incur for the Intereſt, if it is not paid at the Time; Intereſt ſhall not be allowed. *R. Sal.* 449. *Semb.* 1 *Ch. R.* 28.

So, if a Man accounts for Rents and Profits, he ſhall not pay Intereſt for the Money received. 1 *Ch. R.* 184.

[For the Sum is uncertain. *Counteſs. Ferrers* v. *E. Ferrers*, *M.* 7 *G.* 2. *C. T. T.* 2.]

If there is an Eſtate to *A.* for Life, afterwards to *B.* in Tail, and if *B.* dies without Iſſue, that it ſhall be charged with 400 *l.* to *C.* with Intereſt, and, ſo charged, to *D.* in Tail; *B.* dies without Iſſue before *A.* there ſhall be no Intereſt for the 400 *l.* till the Death of *A.* *R.* 1 *Ch. R.* 212.

[If a Widow poſſeſſes herſelf as Adminiſtratrix of all her Huſband's Effects, and carries on the Buſineſs, but has not ſold all the Goods, her only Fund for raiſing Money, and has been guilty of no Delay in the Suit, ſhe ſhall not pay Intereſt for the Money reported due. *Ryves* v. *Coleman*, *M.* 1742. 2 *Atkyns* 439.]

[Intereſt is never charged on an Executor who makes uſe of Aſſets come to his Hands in the Way of his Trade. *Child* v. *Gibſon*, *T.* 1743. 2 *Atkyns* 603.]

[If a Debtor makes a Creditor by Note his Executor, he ſhall not have Intereſt; for he may fairly make a Profit by Teſtator's Aſſets coming in. *Adams* v. *Gale*, *M.* 1740. 2 *Atkyns* 106.]

[Intereſt is not allowed on Arrears of Jointure in general, tho' on a Special Caſe (as if Jointreſs is obliged to borrow Money at Intereſt) it may. *Anon.* *T.* 1755. 2 *Vezey* 661.]

(3 S. 5.) When it ſhall be allowed.

But where a Debt is demanded in Equity, the Court uſually gives Intereſt.

If by Deviſe 20000 *l.* is given to *A.* to be paid 1000 *l.* annually; if it is not paid at the Day limited, Intereſt ſhall be allowed; for the Sum and Day of Payment were certain. 1 *Sal.* 156. 1 *P. W.* 542.

[When the Arrears of an Annuity or Rent-charge are a Sum certain, or where there is a Clauſe of Entry, or *Nomine Pœnæ*, or ſome Penalty on the Grantor, which is relievable only in Equity, there Intereſt is decreed on Arrears, but not otherwiſe. *Counteſs Ferrers*, v. *E. Ferrers*, *M.* 7 *G.* 2. *C. T. T.* 2.]

[If an Annuitant with Power of Entry in Caſe of Arrears, and to hold till paid all Arrears, Coſts, and Damages, enters, he ſhall hold till paid Intereſt on the Arrears down to the Day. *Robinſon* v. *Cumming*, *T.* 1742. 2 *Atkyns* 409.]

[If an Annuity is given for Maintenance, and ſecured by Bond with Penalty, the Court will decree Intereſt on the Arrears, to be computed at the End of each Half Year. *Newman* v. *Auling*, *M.* 1747. 3 *Atkyns* 579.]

[Intereſt may be given for Arrears of an Annuity often demanded; if the Demands do not appear at Hearing, the Court will reſerve it till after Account taken. *Stapleton* v. *Conway*, *P.* 1750. 1 *Vezey* 427.]

And it ſhall be paid without Allowance for Taxes; for it is a Sum in Groſs, and not iſſuing out of Land. 1 *Sal.* 156.

So Intereſt, paid after the Rate of 8 *l. per Cent.* ſince the *St.* 12 *Car.* 2. ſhall not be diſcounted towards Satisfaction of the Principal. *R.* 2 *Ver.* 42, 78. *R. Cont.* 2 *Ver.* 145.

[Tho' 5 *l. per Cent.* is directed by Deed to be allowed till a Purchaſe, yet if the Money has been laid out in Government Securities which produced but 4 *l. per Cent.* the Court will reduce the Intereſt to 4 *l. per Cent.* *Letchmere* v. *E. Carliſle*, *M.* 1733. 3 *P. W.* 211. *C. T. T.* 80.]

[Where a Portion is charged on Land, and the Will does not mention Intereſt, the Court will give only 4*l.* tho' the legal Intereſt is 5 *l. per Cent.*; ſo if charged on Perſonal Eſtates. *Guillam* v. *Holland*, *T.* 1741. 2 *Atkyns* 343.]

[The Court has never directed more than 4 *l. per Cent.* Intereſt, in Caſes of Money due generally, ſince *Ld. King* had the Seals in 1725. *Wood* v. *Briant*, *H.* 1742. 2 *Athyns* 521.]

[If a Legacy is charged on Perſonal Eſtate, and Intereſt directed, the Court will order it at legal Intereſt, if charged on Real at 1 *l. per Cent.* leſs. *Moore* v. *Moore*, *M.* 1746. 3 *Atkyns* 402. *Bryant* v. *Speke*, *M.* 1748. 1 *Vezey* 171.]

If a Legacy is demanded and there are Aſſets, Intereſt ſhall be allowed from the Time of the Bill. *Eq. Abr.* 286.

[If an Annuity is given to the Heir at Law of the Deviſor till twenty-four, and he dies before, there being Arrears due, Intereſt ſhall be allowed on them to his Repreſentative from the Time they are liquidated by the Maſter's Report. *Draper's Company* v. *Davis*, *T.* 1741. 2 *Atkyns* 211.]

So, ſometimes, from the Death of the Teſtator: As, where a Legacy was given to an Infant, tho' ſaid, that it ſhall be paid when the Executor pleaſes. 1 *Ver.* 251. *Eq. Abr.* 286.

[Intereſt ſhall be allowed for Portions given by a Father immediately, and if they are ſcanty, and uſual Intereſt is riſen, the Court will give Four and one Half *per Cent.* tho' charged upon Land. *Incledon* v. *Northcote*, *H.* 1746. 3 *Atkyns* 430.]

Where it is charged upon Land in Poſſeſſion. 2 *P. W.* 26.

[If an Appointment is made of Money charged upon the Real Eſtate of an Infant who dies, and the Eſtate deſcends to his Couſin, Heir at Law to the Infant's Father, and to the Infant, Intereſt ſhall be paid by ſuch Heir at Law from one Year after the Appointment, and not out of the Infant's Perſonal Eſtate. *Sergeſon* v. *Sealey*, *M.* 1742. 2 *Atkyns* 412.]

Or upon Perſonal Eſtate, which conſiſts in Mortgages. 2 *P. W.* 27.

[A Legacy out of a Rent-charge ſhall carry Intereſt, but not more than the Rent will produce. *Stonehouſe* v. *Evelyn*, *P.* 1734. 3 *P. W.* 252.]

So, if a Legatee exhibits his Bill, and no Aſſets are diſcovered, and afterwards Aſſets come to the Hands of the Executor, and a new Bill is exhibited; the Legatee ſhall have Intereſt from the filing of the firſt Bill; for that was a good Demand. 2 *Ca. Ch.* 2.

[A Portion charged on a Real Eſtate carries Intereſt in its Nature, tho' not mentioned. *E. Pomfret* v. *Ld. Windſor*, *T.* 1752. 2 *Vezey* 472.]

So,

So, if 1200 *l.* is deviſed for the Portion of an Infant, at his full Age; Intereſt ſhall be paid in the *Interim*. 1 *Ch. R.* 265. *Vide Ante*, (3 R. 6.)—*Poſt*, (3 Y. 8.)

If Land is deviſed for Payment of Debts, Intereſt ſhall be allowed for Debts upon ſimple Contract. 1 *P. W.* 229. 2 *P. W.* 27.

[If a Man in his Lifetime creates a Truſt Term for Payment of Debts contained in a Schedule, ſimple Contract Debts therein carry Intereſt; for it is in the Nature of a Specialty. *Barwell* v. *Parker*, *T.* 1751. 2 *Vezey* 363.]

If a Legacy is payable out of a Reverſion, *&c.* or at no fixt Time; Intereſt is uſually allowed from the End of one Year after the Death of the Teſtator. 2 *P. W.* 27.

But if the Money for a Legacy is brought into Court, the Intereſt ceaſes, till it is placed in a Fund. 2 *P. W.* 27.

[Intereſt on a Mortgage ſhall not be ſtopt but upon proper Tender and Notice; not on Offer to pay the Balance of what is due on the Mortgage on one Hand, and an open Account on the other. *Garforth* v. *Bradley*, *T.* 1755. 2 *Vezey* 675.]

So, if an Executor does not pay the Money of an Orphan in *London*, to the Chamberlain, within a convenient Time, he ſhall pay ſuch Intereſt as the Chamberlain ſhould pay. 1 *Ch. R.* 108.

And he was decreed to pay 6 *l. per Cent.* tho' the Chamberlain pays but 5 *l. per Cent.* 2 *Ca. Ch.* 170.

So, if the Executor receives Intereſt, or uſes the Money in Trade, he ſhall pay Intereſt, *R.* 1 *Ver.* 197.

[If an Executor places out Aſſets ſpecifically deviſed, the Court will oblige him to account for the Intereſt he has made of theſe Aſſets. *Child* v. *Gibſon*, *T.* 1743. 2 *Atkyns* 603.]

[If a Receiver of the Eſtate of an Infant, who has no Teſtamentary or other Guardian, is directed to lay out the ſurplus Rents with the Approbation of the Maſter, and does not do it, he ſhall pay Intereſt at 4 *l. per Cent.* till the Infant comes of Age; and this tho' the Infant after coming of Age has ſettled the Accounts and admitted and received the Balance. *Hicks* v. *Hicks*, *M.* 1744. 3 *Atkyns* 274.]

[If a Grandmother by Deed Poll depoſits 400 *l.* in the Hands of *A.* for the Uſe of *B.* if not otherwiſe provided for during his Minority, with a Clauſe that *A.* ſhould not be charged with Intereſt, and 200 *l.* thereof was *B.*'s own Money, recovered in a Suit in which *A.* was Solicitor, *A.* ſhall be charged with Intereſt for that 200 *l.* and not for the other. *Brown* v. *Pring*, *H.* 1749. 1 *Vezey* 407.]

So, if a Sum certain is covenanted to be paid, Intereſt ſhall be allowed for it, tho' it ſounds in Damages. *Tr. Eq.* 118.

So, if due upon a Security with a Penalty. *Ibid.*

Or, upon a Note for Value received, uſually. *Vide Tr. Eq.* 118.

[Tho' there is no Evidence of Agreement for Intereſt on a Banker's Note, yet it may be allowed on Circumſtances, as if a Cuſtomer orders a Sum to be wrote off from his Caſh Account, and a Note or Security given for it; and Intereſt is afterwards paid on this Sum for ſeveral Years. *Jacomb.* v. *Harwood*, *P.* 1751. 2 *Vezey* 265.]

[If a Scrivener or Attorney takes Money, and gives a Note to put it out to Intereſt, he is chargeable with Intereſt after a reaſonable Time, (as three Months) unleſs the Client accepts the Security and Intereſt thereon. *Barwell* v. *Parker*, *T.* 1751. 2 *Vezey* 363.]

[A ſtated Account carries Intereſt, and there ſhall be no Allowance for Trouble (even in Caſe of an Adminiſtrator) unleſs it is demanded in a reaſonable Time. *Ibid.*]

[If a Man makes Leaſe with Covenant for quiet Enjoyment. and the Tenant is evicted, and brings Action againſt the Executor, and recovers, and aſſigns the Judgment; the Aſſignee is intitled to Intereſt, whether againſt Heir at Law, Deviſee, or Truſtee for Payment of Debts. *E. Bath* v. *E. Bradford*, *T.* 1754. 2 *Vezey* 587.]

[Tho'

[Tho' formerly *B. R.* computed Intereſt only to the Commencement of the Action, yet now they allow it to the Time of giving Judgment. *Robinſon* v. *Bland*, *M.* 1 *G.* 3. 2 *B. M.* 1077.]

(3 S. 6.) When a Payment ſhall be intended for Intereſt.

If a Debtor pays a Sum upon a Mortgage or Bond, leſs than the Intereſt due; it ſhall be intended for Intereſt, and not for the Principal. *Ca. Ch.* 24, 106. 1 *Ver.* 24. *Vide Poſt*, (4 D. 1.—4 F.)

So, if Land is deviſed to a Daughter or to Truſtees till 3000 *l.* paid for a Portion by him in the Remainder; the Profits do not ſink the Principal Sum till one Third, above the Intereſt, is raiſed. *Tr. Eq.* 121.

If Intereſt is reſerved at 6 *l. per Cent.* with an Agreement, that if it is paid by ſuch a Day, it ſhall be taken at 5 *l. per Cent.* If not paid, Intereſt at 6 *l. per Cent.* ſhall be decreed. 2 *Ver.* 290.

But if Intereſt is reſerved at 5 *l. per Cent.* with a Covenant to pay 6 *l. per Cent.* if the 5 *l. per Cent.* is not paid at ſuch a Day; only 5 *l. per Cent.* ſhall be decreed; for the other is in the Nature of a *Nomine Pœnæ*. *R.* 2 *Ver.* 289. *R.* 2 *Ver.* 316, *But a Qy. made*. *R. Cont.* 2 *Ver.* 134.

[If a Man gives a Woman who cohabits with him a Bond for 2000 *l.* and Intereſt during her Life, and then to her Children, but maintains her till his Death, ſuch Maintenance ſhall be deemed in Lieu of Intereſt. *Lloyd* v. *Carter*, *M.* 1740. 2 *Atkyns* 84.]

(3 T) Interpleader; (Bill of.)

IF an Action is againſt a Tenant by two Perſons, who claim his Rent; he may exhibit his Bill of Interpleader, and bring his Rent into Court, and, after the Conteſt determined, between the Defendants, have his Coſts, if he is in no Default. *Vide Practical Regiſter in Chancery* 38, 9.

So, if *A.* receives Money for *B.* if upon an Account between him and *C.* ſo much appears to be due to him, and if it is not due, to return it to *C.* and both ſue *A.* he by Bill of Interpleader may bring the Money into Court, and thereupon he ſhall have an Injunction; and after an Account between *B.* and *C.* he ſhall have Coſts from him, who had no Cauſe of Suit. *R. Ch. R.* 257, 8.

[An Executor cannot bring a Bill of Interpleader till he has proved the Teſtator's Will. *Mitchell* v. *Smart*, *H.* 1747. 3 *Atkyns* 606.]

[To a Bill of Interpleader againſt Attorney-general and others, there muſt be an Affidavit annexed. *Errington* v. *Attorney-general et al'*. *P.* 1731. *Bunb.* 303.]

[The Affidavit to Bill of Interpleader need not ſwear it is at Plaintiff's own Expence, only that there is no Colluſion with any of the Defendants. *Metcalf.* v. *Hervey*, *T.* 1749. 1 *Vezey* 248.]

[Interpleader muſt ſhew that there is ſuch Perſon *in Rerum Natura* as can interplead. *Ibid.*]

[But if a Guardian ſets up a Title to himſelf, and conceals an Infant who is ſuggeſted to have Right to contravert that Title, Bill may be brought to compel the Guardian to produce him. *Ibid.*]

(3 V) Joint-tenants.

(3 V. 1.) Who ſhall join in a Suit.

IN a Suit in Equity, all who have a joint Intereſt in the Thing demanded ought to join.

But two Perſons cannot join in the ſame Bill, to have Relief in ſeveral Reſpects.

So the King and the Queen Dowager cannot join to have a Recompence for a Covenant broken by Waſte, &c. where the King has the Inheritance, and the Defendant claims under the Leſſee of the Queen, who had a Grant for her Life. *R. Hard.* 219.

(3 V. 2.) Who ſhall be joined.

All concerned in the Thing demanded ought to be made Parties in Equity.

As, if a Bill is againſt the Executor of an Obligor for the Diſcovery of Aſſets; all the Obligors ſhall be Parties, for the Charge ought to be equal. 2 *Vent.* 348.

So, if one Obligor is ſued, all ought to be joined, tho' the others are only Sureties. *Dub.* 2 *Vent.* 348.

But if there is Judgment againſt one Obligor, his Executor may be ſued for a Diſcovery of Aſſets without the other Obligors; for the Bond is extinguiſhed by the Judgment. 2 *Vent.* 348.

If *B.* has a joint Demand againſt three joint Factors and two of them are beyond Sea, he ſhall ſue the other alone for the Whole. 1 *Ver.* 140.

(3 V. 3.) Who ſhall take jointly.

If an Eſtate is limited in Truſt for others, they ſhall be Joint-tenants of the Truſt, where they would take the Eſtate jointly, if it was limited to them in the ſame Manner. *Semb.* 1 *Ver.* 361, 2. *Vide Deviſe*, (N. 8. *Eſtates* (K. 1.)

If Articles are between many for their Farming the Exciſe: their Intereſt ſurvives, in reſpect of the joint Charge, without an expreſs Agreement to the contrary. *R.* 1 *Ver.* 33.

And if there is an Agreement, that it ſhall ſurvive, the Benefit ſurvives tho' one aſſigns to his Son. 1 *Ver.* 33, 4.

So, if there be a Settlement upon Truſt, that his Siſters divide the Rents equally, and the Whole ſhall be to the Survivor; it will be a joint Intereſt. *R.* 2 *Ver.* 323.

So, if a Farm is demiſed to two. 1 *Ver.* 217. *Vide Poſt*, (3 V. 4.)

Or many by Gift, Deviſe, &c. take any Eſtate or Intereſt jointly. 1 *Ver.* 217.

So, if there is a Deviſe of the Reſidue of the Perſonal Eſtate to *A.* and *B.* it will be a joint Deviſe, and the Survivor ſhall have the Whole. *R.* 1 *Ver.* 482, 3. *Acc.* 1 *Ca. Ch.* 238.

So, if the Teſtator makes *A.* and *B.* his Executors, their Intereſt ſurvives. 1 *Ver.* 483. 2 *Ca. Ch.* 65.

If 200 *l.* is deviſed for the Purchaſe of Land for *A.* and *B.* and the Purchaſe is made for the Uſe of *A.* aud *B.* jointly; the Survivor ſhall have it. *R. Carth.* 15. *R. cont.* 2 *Ver.* 47.

But if a Mortgage is made to two, there ſhall be no Survivorſhip; but each ſhall have the Money by him advanced with Intereſt, and if he dies, his Executor ſhall have it. *R.* 1 *Ch. R.* 58.

So, if 200 *l.* a-piece is deviſed to *A.* and *B.* who take a Mortgage for the Whole to them jointly; the Survivor ſhall not have it; for each is a Truſtee for the other for his Share. *Carth.* 16.

(3 V. 4.) Who, as Tenants in Common.

A Gift to two, *equally divided*, makes them Tenants in Common. 2 *Vent.* 366. *Vide Deviſe*, (N. 8.) *Vide Eſtates*, (K. 8)

[If *A.* deviſes the Reſidue of her Eſtate to *B.* and *C.* Daughters of *D.* and *E.* whom ſhe deſires to be Truſtees for their Children, and ſays, "And my Will is, "that my Eſtate be equally divided between *B.* and *C.* whom I appoint Executors;" and leaves all the next of Kin, except one, Legacies; *B.* dies in Teſtatrix's Life; the Deviſe is not a Jointenancy, but in common; for the Words to be *equally divided*, make a Tenancy in common in a Will, tho' not in a Settlement. *Owen* v. *Owen*, *H.* 1738. 1 *Atkyns* 494.]

So, *Equally to be divided*, 2 *Vent.* 366. *P. W.* 15.

[If a Man either by Deed or Will grants to his two Daughters the Rents of his Lands, equally to be divided betwixt them, paying 5 *l.* to his Wife for Life, and then to his Daughters and their Heirs, equally to be divided betwixt them; it is a Tenancy in Common. *Rigden* v. *Vallier*, *H.* 1741. 3 *Atkyns* 731.]

So a Deviſe to two *equally* makes them Tenants in Common. 2 *Vent.* 366. 1 *Ver.* 32.

So a Covenant to ſtand ſeiſed to the Uſe of two *equally to be divided*, and to their Heirs and Aſſigns, makes them Tenants in Common of the Inheritance. *R.* 2 *Vent.* 365.

[If a Father by Deed, in Conſideration of natural Love, grants after his Death to two Children the Rents of Lands, equally to be divided between them, they paying their Mother 5 *l. per Annum* during Life, and after her Death they to have the Lands, to them and their Heirs for ever, equally to be divided between them; it is a Tenancy in Common, and the Deed a Covenant to ſtand ſeized. *Rigden* v. *Vallier*, *H.* 1750. 2 *Vezey* 252.]

So a Truſt to pay the Profits to *A.* and *B.* in a ratable and equal Manner, and afterwards to convey to them in like Sort, ſhall be executed to them, as Tenants in Common. *R.* 1 *Lev.* 232.

[If *A.* deviſes two Houſes to *B.* and *C.* generally, and then ſays, my Meaning is, that the Rents ſhall be equally ſhared between *B.* and *C.* they ſhall take as Tenants in Common. *Prince* v. *Hylin*, *H.* 1737. 1 *Atkyns* 493.]

A Deviſe to *A.* and *B.* paying 24 *l. per Ann.* to *D.* for Life, *viz.* each of them 12 *l. per Ann.* the Payment by equal Moieties, makes them Tenants in Common. *R.* 1 *Ver.* 353.

If two pay *equally* for a Purchaſe, they ſhall be Tenants in Common in Equity. 1 *Ver.* 361. *Contra infra.*

[If five Perſons purchaſe overflowed Lands as Joint-tenants in Fee, and they contribute jointly to the Draining, and one deſerts the Undertaking, and the others buy ſeveral Eſtates for carrying on their Deſign, and ſeveral die; they ſhall be deemed Tenants in Common, and the Heir of him who deſerted ſhall be let in, on paying his Proportion and Intereſt. *Lake* v. *Craddock*, *M.* 1732. 3 *P. W.* 158.]

[If two Perſons advance Money on a Mortgage, tho' it is made to them jointly, yet it ſhall be a Tenancy in Common. *Rigden* v. *Vallier*, *H.* 1741. 3 *Atkyns* 731.]

[So in a Purchaſe, if there is a Diſproportion in the Sums advanced, *otherwiſe if the Sums are equal.* *Ibid.*]

So, if it is ſaid at the End of a Will, that the Executors ſhall take, *Share and Share alike.* 2 *Ca. Ch.* 65.

[A Deviſe to Children *Share and Share* alike, makes them Tenants in Common; ſo does the Word *reſpectively*. *Heathe* v. *Heathe*, *H.* 1740. 2 *Atkyns* 121.]

[Therefore, if one of them dies Inteſtate, after Teſtator's Death his Share goes to the Father. *Ibid.*]

So, if a Sum of Money is deviſed to be laid out in a Purchaſe for the Benefit of *A.* and *B.* before a Purchaſe made, the Share of *B.* if he dies, does not ſurvive. *Carth.* 16.

So, where there are Partners in Trade or Traffick, they ſhall take as Tenants in Common, and there ſhall be no Survivorſhip; for the Cuſtom of Merchants extends to all Trades. 1 *Ver.* 217.

Tho' there is no Clauſe that there ſhall be no Survivorſhip. *Ibid.*

So, if two Perſons join in the Stock of a Farm. *R.* 1 *Ver.* 217. *Vide Ante*, (3 V. 3.)

Tho' one of them ſaid, that he was content that the Stock ſhould ſurvive. 1 *Ver.* 217.

So, in all Caſes, where ſeveral join, or are intereſted jointly in the way of Trade. *Ibid.*

So, if there is a Deviſe to *A.* and *B.* in Truſt, that the Profits ſhall be equally divided between the Deviſor's Wife and Daughter during the Life of his Wife, Remainder over; the Wife and the Daughter are Tenants in Common; and if the

the Daughter dies before the Wife, her Moiety in the Nature of a Tenancy *pur auter vie* ſhall go to her Executor or Adminiſtrator. *R.* 2 *Ver.* 430. *P. W.* 34.

If the Surrender of a Copyhold is, after the Death of the Surrenderor's Wife, to the Uſe of all his Sons and Daughters equally to be divided, and to their reſpective Heirs; it is a Tenancy in Common. *Per* 2 *J. Holt cont. P. W.* 14. *Sal.* 391.

(3 V. 5.) What will make a Severance of the Jointure.

An Act, which makes a Severance of the Jointure at Law, will make a Severance in Equity. *Vide Eſtates*, (K. 5.)

If three have the Truſt of a Term, and one of them mortgages all his Part, it will be a Severance of all his Intereſt in the Term, and not only for the Value of the Mortgage; for Jointenancy is not favoured in Equity. *R.* 1 *Sal.* 158.

If *A.* and *B.* take jointly; a Leaſe by one, to commence after his Death, makes a Severance, and will be good againſt the Survivor. *R.* 2 *Ver.* 323.

[Equity will eſtabliſh a Parol Agreement for *owelty* of Partition of long ſtanding, acknowledged by all to have been the actual Agreement, and put in Execution accordingly. *Ireland* v. *Rittle*, *M.* 1739. 1 *Atkyns* 541.]

[There muſt be either an Agreement, or an actual Alienation, to make a Severance; the Declaration of one Party is not ſufficient: thus, if *A.* Joint-tenant, on Marriage ſettles her Real Eſtate, but as to the Perſonal, there is only a Recital that ſhe ſhall enjoy it to her ſeparate Uſe, and a Covenant from the Huſband for that Purpoſe; and then thoſe Words, *for Want of Iſſue of her Body*, to the next of Kin of her Family, and the other Joint-tenant is not Party hereto, it is no Severance. *Partriche* v. *Powlet*, *T.* 1740. 2 *Atkyns* 54.]

(3 V. 6.) What Remedy one Joint-tenant, &c. ſhall have againſt his Companion.

[On a Bill brought for a Partition, Plaintiff muſt ſhew a Title in himſelf to a Moiety, and not alledge generally, that he is in Poſſeſſion of a Moiety; but he need not in his Bill ſet forth a particular Title, but a general Seiſin in Fee. *Cartwright* v. *Pultney*, *T.* 1742. 2 *Atkyns* 380.]

A Joint-tenant, or Tenant in Common, &c. ſhall have an Account, in Equity, againſt his Companion, for his Share of the Profits of an Eſtate. *Vide Ante*, (2 A. 1.)

So, one Partner in Trade againſt another. *Vide Eq. Abr.* 370, 1.

So, an Executor or Adminiſtrator of one Partner. 1 *Ver.* 118.

So, if the other Partner combines with the Creditors, the Court will appoint an Attorney to recover the Debts, if the Defendant will not give Security to anſwer the Share of the Plaintiff in them. *Ibid.*

So, if there are Joint-tenants of the Truſt of a Term, and one of them dies, and his Executor obtains an Aſſignment of the Term from the Truſtees; the other ſhall have a Decree for an Aſſignment to him; for Equity will direct the Truſt to the Survivor, as the Term will ſurvive, when there are Joint-tenants of a Term. *R.* 2 *Ver.* 556.

If *A.* and *B.* join in a Purchaſe of Lands, ſubject to Debts agreed to be diſcharged by the Purchaſe Money; and for a Favour to *A.* the Creditors abate their Intereſt, or compound for his ſole Benefit; *B.* ſhall have equal Advantage of the Abatement; for it was a mutual Truſt. *Eq. Abr.* 7.

So by *St.* 3 & 4 *Ann.* 16. One Joint-tenant or Tenant in Common, his Executors or Adminiſtrators ſhall have Account againſt the other, his Executors or Adminiſtrators, as Bailiff, if he receive more than his Share of the Profits.

And tho' now by this Statute an Account lies at Law, yet it ſeems more proper for Equity, eſpecially, if there are mutual or various Demands. *Eq. Abr.* 5.

So one Joint-tenant ſhall have Contribution againſt his Companion.

[Therefore, if Money to fit out Privateers is raiſed by Shares, and ſome Shares remain undiſpoſed of, and a Prize is taken, the undiſpoſed Shares belong to the

Managers, (whether they purchaſe them in after the Capture or not) and ſhall not be divided among the other Owners; for in Caſe of Loſs they would not have been liable for them. *Blunt* v. *Cumyns*, *T.* 1751. 2 *Vezey* 331.]

So, if a Man makes a Mortgage, and afterwards deviſes to *A.* for Life, and afterwards to *B.* in Fee; *B.* ſhall have Contribution againſt *A.* for a Proportion of the Mortgage Money. *Ca. Ch.* 223, 4. 1 *Ver.* 70. *Vide Poſt*, (4 A. 6.)

So, if a Teſtator charges Lands with Portions to his Daughters, to be paid at ſuch an Age, and then deviſes *ut ſupra*; *B.* by Bill ſhall compel *A.* to contribute his Proportion, tho' the Daughters are not arrived at the Age when their Portions are payable. *R. Ca. Ch.* 223.

(3 V. 7.) When the Act of one binds his Companion.

If there are Partners in Trade, and one of them gives a Note, and ſubſcribes it, for himſelf and Company; both are bound, tho' it does not appear that the other knew of it, or that the Money was applied to the Trade. 2 *Ver.* 278, 292.

(3 V. 8.) What not.

But if one Joint-tenant deviſes his Moiety to *A.* it ſhall not be decreed againſt the Survivor. 2 *Ver.* 385.

Or, makes a Grant of his Moiety to his Wife, but ſuch Grant is defective, it ſhall not be aided. *Ibid.*

If *A.* and *B.* take a College Leaſe, and agree that there ſhall be no Benefit of Survivorſhip, but afterwards renew without ſuch an Agreement made, and one of them aſſigns his Moiety to his Wife, by a defective Deed; ſhe ſhall not be aided under Pretence of the antecedent Agreement. *R.* 2 *Ver.* 385.

(3 V. 9.) When an Act by one of them binds him after he ſurvives.

If a Jointenant deviſes all his Land in *A.* and ſurvives his Companion, all paſſes, which he took by Survivorſhip; tho' his Deviſe would have been void againſt his Companion, if he had ſurvived. *Eq. Abr.* 172.

(3 W) Judgment.

CHANCERY cannot proceed by Suit in Equity to annul a Judgment at Common Law. *Arg.* 1 *Ch. R.* 47.

Nor, to ſtay Judgment and Execution being awarded by the Court. 2 *Bul.* 194.

Nor, to examine the Juſtice of a Judgment given. *Semb.* 1 *Ch. R. E. of Oxford* 7.

Nor, to impriſon any Perſon for not releaſing his Judgment. *Per Co.* 1 *Rol.* 111.

Nor does it uſually relieve after Verdict, Judgment, and a Writ of Error. *R. upon Demurrer*, 1 *Ch. R.* 248.

But after a Judgment at Law, a Man may pray in Equity to be relieved upon a collateral Matter. *R. cont. upon Demurrer*, 4 *Inſt.* 86. 2 *Cro.* 344. *Acc.* 1 *Ch. R. E. of Oxford* 10. *Dub. Hard.* 121.

[The Decrees of Chancery are of equal Force with Judgments at Law; therefore if an Executor is ſued for juſt Debts, and confeſſes the Bill, and is decreed to pay them, and other Creditors obtain Judgments at Law afterwards in real Point of Time, tho' the firſt Day of Term was prior to the Decree, the Executor ſhall, on Bill exhibited for that Purpoſe, be protected in Obedience to the Decree; the Judgment Creditors to be injoined and come in after the Decree Creditors in due Courſe of Adminiſtration. *P. Jekyll M. R.* affirmed by *Talbot* C. and affirmed by the Houſe of Lords. *Morrice* v. *Bank of England*, *M.* 10 *G.* 2. *C. T. T.* 217.]

After

After Judgment and Execution. *Arg.* 1 *Ch. R.* 21.

In Real, as well as Perſonal Actions. *Ibid.*

After Judgment in *B. R.* as well as in *C. B.* Juſtices in *Eyre*, *&c.* *Ibid.*

After Judgment upon a Verdict, as well as upon a Demurrer. *Ibid.*

[If Plaintiff at Law knows the Fact to be otherwiſe than the Jury find it, and Defendant was ignorant of it at the Trial, this Court will relieve, unleſs Defendant ſubmits to try it at Law firſt, when he might have had Diſcovery here by Bill. *Williams* v. *Lee*, *T.* 1745. 3 *Atkyns* 223.]

[This Court will not relieve againſt exceſſive Damages; for the Remedy is, by moving the Court where the Action was tried for a new Trial. *Ibid.*]

Tho' the Equity alledged was a Matter ariſing before the Judgment given. *Arg.* 1 *Ch. R.* 22.

As, if the Plaintiff obtains Judgment upon a Bond, where the Money is paid, but no Acquittance given; or the Acquittance is without a Seal, or loſt. 1 *Ch. R. Earl of Oxford* 8. *Cont. Hard.* 23.

So, if a Man obtains a Judgment at Law for a Thing diſcharged by the Act of Oblivion, 12 *Car.* 2. *Chancery* will relieve; for a Court of Equity may interpret a Statute, as well as the Judges of the Law. *R. Ca. Ch.* 56. *Dub. Hard.* 121.

[On the other Hand, if Judgment is taken againſt the Lands, *&c.* of Defendant, diſcharged by an Inſolvent Act, who afterwards has a Legacy left him, and Plaintiff ſues a *Fieri Facias* on his Judgment, (the Legacy being due but unpaid, and in the Executor's Hands, and lodges it with the Sheriff, and takes a Warrant to levy Debt and Damages out of the Legacy in Executor's Hands, and he refuſes to pay, and Plaintiff brings Bill againſt the Legacy in Executor's Hands, and he refuſes to pay, and Plaintiff brings Bill againſt the Legatee and the Executor, the Court will order Debt, Damages, and Coſts, to be paid out of the Legacy. *Edgell* v. *Haywood*, *T.* 1746. 3 *Atkyns* 352.]

So, *Chancery* may make a Decree, that the Party releaſe or diſcharge the Judgment. *Arg.* 1 *Ch. R.* 22. *Vide* 1 *Roll.* 111.

[If a Judgment is given for 6000 *l.* to ſecure a Purchaſe of the Reverſion of 300 *l. per Annum* for 300 *l.* only, the Court will order it to ſtand as a Security only for Principal, Intereſt and Coſts. *Barnardiſton* v. *Lingwood*, *H.* 1740. 2 *Atkyns* 133.]

[If a Solicitor takes a Judgment from his Client for the Coſts, pending a Cauſe, and there appear improper Charges in his Bill, the Court will order the Judgment to be delivered up, tho' the Bill has been adjuſted many Years ago. *Draper's Company*, v. *Davis*, *P.* 1742. 2 *Atkyns* 295.]

[If a Decree has been obtained in the Exchequer, by Conſent that a Will is well proved, which Will is afterwards found by Verdict to be forged, Chancery will reſtrain the Party claiming under it from ſetting up that Decree. *Barnſley* v. *Powell*, *T.* 1749. 1 *Vezey* 284.]

That he reſtore Poſſeſſion obtained upon the Judgment. *Arg.* 1 *Ch. R.* 22.

That he releaſe Coſts, account for meſne Profits, *&c.* *Ibid.*

So, if *Chancery* by Decree vacates a Judgment at Common Law, yet it ſhall not be an Offence within the *St.* 27 *Ed.* 3. *of Premunire*; for the *Chancery* is not *another Court* within the Intent of that Stat. nor ſhall the Cauſe be conſtrued to be drawn *ad aliud Examen*. *Cont.* 3 *Inſt.* 123. *R. Acc.* 1 *Lev.* 242. *Certified to the King by his Council*, *Arg.* 1 *Ch. R.* 25, 27.

[Before a final Decree an Executor may confeſs a Judgment, which is not at all affected by a prior Decree to account. *Smith* v. *Haſkins Styles*, *T.* 1742. 2 *Atkyns* 385.]

(3 X) Juriſdiction.

When *Chancery* ſhall have it in Caſes out of the Kingdom, *&c.*

SO *Chancery* will give Relief, tho' the Land lies out of the Juriſdiction, if the Perſon is within the Juriſdiction of the Court: as, it will make Joint-tenants account for Profits of Land in *Ireland*.

Or a Truſtee, who lives in *England* to perform his Truſt in *Ireland*, a County Palatine, &c. *Vide Poſt*, (4 W. 27.)

So it will decree the *Earl of Derby* to perform an Agreement concerning the *Iſle of Man*. *Ca. Ch.* 221.

[If a Matter ariſes in the Juriſdiction of the Courts of *Wales*, of Value or Difficulty, Parties may ſue here; yet if it is of ſmall Conſequence, the Court will diſmiſs the Bill with Coſts. *Brace v. Taylor*, *H.* 1741. 2 *Atkyns* 253.]

So, if Land within the Dutchy is granted by the King, and upon a Bill for a Diſcovery and an Account in *Chanteery*, an Injunction is granted by the Dutchy Court; ſuch Injunction ſhall be over-ruled in *Chancery*, and the Priority of Suit being here, an Injunction of the Suit there ſhall be granted here. 1 *Ch. R.* 53.

So a Plea ſhall not be allowed to a Bill in *Chancery*, that the Defendant has Privilege to be ſued in the *Exchequer*. 1 *Ch. R.* 69. For no Privilege ſhall be allowed againſt a *Subpœna* in *Chancery*, where the Intereſt of the King is not concerned. 1 *Ch. R. E. of Oxford* 14.

Nor a Plea of Privilege of the Univerſity to a Bill, concerning Lands in *Cornwal*, 1 *Vez.* 212. But if it be allowed, it ought to come in by Plea. *Ca. Ch.* 237. *R.* 2 *Vent.* 362.

So, *Chancery* ſhall have Juriſdiction of a Mortgage in a County Palatine.

So, if the Bill ſuggeſts that there are prior Mortgages to Perſons out of the County Palatine, tho' it be not proved. *Semb.* 1 *Ver.* 298.

So a Plea of the *Cinque Ports* was over-ruled. 1 *Ch. R.* 140.

So, the Court of Stannaries does not ouſt *Chancery* of its Juriſdiction; for the former is a Court of Law, and not a Court of Equity. 2 *Ver.* 484.

So, if *A.* mortgages the *Iſle of Sarke*, Part of the Dutchy of *Normandy*, a Bill lies in *Chancery* for the Redemption. *R.* 2 *Ver.* 495.

So *Chancery* will relieve againſt a Decree in *Cheſter*, where the Chancellor was a Party. *R.* 1 *Rol.* 331.

So, if an Act of Parliament gives an excluſive Juriſdiction for ſuch and ſuch Mines to a particular Court; *Chancery* ſhall not be excluded, if the Act does not erect a Court of Equity there. 1 *Ver.* 58, 9.

So, *Chancery* has an Admiral Juriſdiction in many Caſes. 1 *Ver.* 54.

A Matter, which ouſts the Court of Juriſdiction, ought regularly to be alledged by Plea, and ſhall not be objected at the Hearing of the Cauſe. 2 *Ver.* 484.

But *Chancery* will not make Partition of Land in *Ireland*. 1 *Ver.* 421. *Vide Poſt*, (4 E).

Nor will it examine the *Quantum* of a Debt to the King, or the Extents for it; for that belongs to the *Exchequer*: And a Bill for it in *Chancery* ſhall be diſmiſſed. 2 *Ver.* 426.

Except where the Extent is a fraudulent Contrivance, or the Defendant admits that the Debt to the King may be well ſatisfied without the Extent. 2 *Ver*, 426.

Nor will it grant a Sequeſtration of Lands in *Ireland*. *Eq. Ca.* 124.*

* 2 Part of 2 *Mod. Ca.*

So, if there is a Decree for an Account in the *Exchequer* of *Cheſter*, *Marches of Wales*, &c. *Chancery* will not relieve upon a Bill here, becauſe the Witneſſes live out of the Juriſdiction. 2 *Ca. Ch.* 17. *R. Ch. R.* 452.

Nor will it relieve againſt a Decree of Commiſſioners of Sewers. 1 *Ver.* 59.

Nor on a Bill, for an Account of Money collected by Authority of Commiſſioners of Sewers; for the Commiſſioners are a Court, and have Authority to determine. *R. Ca. Ch.* 232.

Nor, for Diſcovery of the Money collected. *R. upon Demurrer*, *Ca. Ch.* 232.

So an Appeal, or Bill of Review does not lie in *Chancery*, on a Decree in Equity in a County Palatine; but it ought to be to the King himſelf. *R. upon Demurrer*, 1 *Ver.* 177, 184.

So, a Bill ſhall not be allowed in *Chancery* for Diſcovery of the Title to Lands in the *County Palatine of Cheſter*, or *Lancaſter*. *R.* 1 *Ch. R.* 183, 278. *Vide Poſt*, (4 E.)

Nor, to obtain Poſſeſſion of Lands there. 1 *Ch. R.* 278.

Or an Account of the Profits. 1 *Ch. R.* 278.

Where

Where the Court has Juriſdiction, it ſhall have Regard to the Laws of a foreign Country, in its Determination here; as, if a Woman has a ſeparate Property in her Money in *France*, it ſhall not be decreed to veſt in her Huſband. *Semb. Eq. Ca.* 100.*

If a Debt is aſſigned in *Holland* by the Huſband to the Wife, it ſhall be allowed here. *Ca. Ch.* 232.

* 2d Part of 2 *Mod. Ca.*

[If a Foreigner contrives a Match with a Ward of this Court abroad, yet if he is afterwards found here, the Court will puniſh him. *Roach* v. *Garvan*, *M.* 1748. 1 *Vezey* 157.]

[This Court can decree ſpecific Performance of Articles executed in *England*, for ſettling the Boundaries of two Provinces in *America*. *Penn* v. *Ld. Baltimore*, *P.* 1750. 1 *Vezey* 444.]

[Tho' the Juriſdiction of the Court is ſubmitted to by anſwering, yet if a Want of it appears at the Hearing, a Court of Equity will make no Decree. *Ibid.*]

Jury.

Vide Trial, Ante, (X)—*Poſt*, (4 V).

(3 Y) Legacy.

(3 Y. 1.) When Words in a Will are expounded otherwiſe than they are in a Deed.

WORDS in a Will may have a different Conſtruction from that, which they have in a Deed. *P. W.* 20. *Vide Poſt*, (3 Y. 7, &c.)

(3 Y. 2.) A Deviſee ſhall have the ſame Advantage as an Heir.

If a Legacy out of Land, for the Portion of a Son or Daughter, lapſes for the Benefit of an Heir, it ſhall alſo for the Benefit of a Deviſee. 2 *P. W.* 276. *Vide Ante*, (3 P. 3.) *Poſt*, (3 Y. 7, &c.)

So, if it is deviſed for a Portion, tho' not expreſſed for a Portion. 2 *P. W.* 276.

So, if charged upon Real and Perſonal Eſtate, as to the Part which affects the Real Eſtate. 2 *P. W.* 278.

So, where the Heir ſhall have the Perſonal Eſtate applied for the Diſcharge of Debts, a Deviſee ſhall alſo have it. 2 *P. W.* 277. *Pr. Ch.* 140. *Vide Ante*, (3 A. 4, &c.—3 P. 1, 2.)

(3 Y. 3.) How a Legacy ſhall be recovered in Equity.

Chancery will enforce the Payment of a Legacy. *Vide Ante*, (3 A. 1.—3 G. 1.)

And if it is a Legacy in Equity only, and not at Law, it ought to be demanded only in a Court of Equity, and not in the Spiritual Court; as, a Sum to be paid upon a Sale of Lands. *R. Hob.* 265.

If an Infant ſues for a Legacy in the Spiritual Court, and afterwards in *Chancery*, *A Suit depending in the Spiritual Court*, is no Plea for the Defendant to the Bill in Equity; for the Plaintiff there has not an equal Advantage, to get Security or Intereſt. *R. Ca. Ch.* 85. 1 *Ver.* 26.

If a Legacy in a Will is eraſed, but upon the Probate, the Executrix admits the Will to be proved, as if there was no Raſure; Equity will compel the Payment. 1 *Ver.* 256. *P. W.* 388.

If the Grandfather gives Legacies to the Grandſon, which are received by the Father; his Executrix ſhall anſwer for all, not actually paid by the Father, with Intereſt, tho' the Father had given a Bond to pay 6000*l.* to the Grandſon; for it ſhall not be intended to include the Legacies, if they are not mentioned. 1 *Ver.* 481, 2.

[A Legatee, whether expreſsly ſuch or as *Ceſtuique Truſt*, has a Right to Satisfaction on an Adminiſtration Bond againſt Real Aſſets, in the Hands of Deviſee

of Administrator *de bonis non* of the original Testator; and this tho' the nominal Legatee and Executor declared the Trust, and covenanted to pay the Legacy. *Ashley* v. *Baitee*, *T.* 1751. 2 *Vezey* 368.]

So *Chancery* will oblige an Executor to give Security for the Payment of a Legacy, payable at a future Day, on a Suggestion, that he wastes the Goods of the Testator. *R. Ca. Ch.* 121.

And if the Will is contested in the Spiritual Court, will stop him from receiving the Debts, &c. till the Contest is determined. *R. Ca. Ch.* 75.

If an Executor pays a Legacy pursuant to a Will, without Notice of a Revocation of it, it shall be allowed him, tho' afterwards it appears that the Will was revoked. *Ca. Ch.* 126.

(3 Y. 4.) What shall be a Legacy.

A Legacy imports a Bequest made by a Testator of his Goods and Chattels.

But it may be secured by a Devise of Lands, &c. *Vide Ante*, (3 A. 3, &c.)

Any Words which shew the Intent of the Testator, are sufficient for a Legacy. *Godol. p.* 3. *c.* 22. *sect.* 21, &c. *Vide Devise*, (N. 1.)

As, if the Testator desires his Executor to give 200 *l.* to *B.* without limiting a Time for Payment; it will be a good Legacy. 1 *Ch. R.* 246.

If a Legacy is given by a Will, and an Annuity or a Legacy of greater Value to the same Person by a Codicil, it shall not be intended in Satisfaction of the Legacy by the Will, but the Legatee shall have both. *P. W.* 424.

[A *Donatio Causa Mortis* is in the Nature of a Legacy, but need not be proved in the Spiritual Court as Part of the Will, for it operates as a Declaration of Trust upon the Executor. *Miller* v. *Miller*, *T.* 1735. 3 *P. W.* 356.]

[It is not good unless made by the Party in his last Sickness. *Ibid.*]

[Nor unless it is delivered in his Lifetime. *Ibid.*]

[Nor of a *Chose in Action*, the Property whereof does not pass by Delivery. *Ibid.*]

[The Delivery of Receipts for the Consideration of *South-Sea* Annuities is not sufficient Delivery to support a *Donatio Causa Mortis* of the Annuities. *Ward* v. *Turner*, *T.* 1752. 2 *Vezey* 431.]

[There cannot be a *Donatio Causa Mortis* of Stock or Annuities without a Transfer, or something *tantamount*. *Ibid.*]

(3 Y. 5.) Of what Thing void.

But a void Legacy shall not be decreed; as, if the Husband of an Orphan in *London*, devises the Money which belongs to his Wife in the Hands of the Chamberlain of *London*; for this is a *Chose in Action* not devisable. *R.* 2 *Vent.* 341.

So, if a Man devises a Thing, which by Custom belongs to the Heir at Law, as an *Heirloom*; it will be void.

So, if he devises Goods, which he has only as Executor, or Administrator, before a full Administration made.

(3 Y. 6.) How a Legacy shall be paid.

A Legacy shall be paid, after all Debts are discharged, out of the Personal Estate.

So, if Land descends to the Heir, and the Personal Estate is exhausted by the Payment of Debts upon Bond, &c. to which the Land was liable, the Legatee shall have Aid in Equity against the Real Estate. *Semb. Sal.* 416.

So, if the Personal Estate is exhausted by the Payment of a Mortgage. *Sal.* 450. *Vide Ante*, (3 P. 3.)

[If a Man devises his Lands, (then in Mortgage) subject to his Debts, to *B.* his Wife for Life, then to *C.* the Interest of his personal Estate to *B.* for Life, then to *C.* and gives *B.* 1500 *l.* if she accepts his Will in Lieu of Dower, and there is not Personal Estate to pay Debts and Legacies; if the Mortgagee takes Part

Part of the Perſonal Eſtate, the Legatees ſhall ſtand in his Place for ſo much out of the Real. *Lutkins* v. *Leigh*, *M.* 8 G. 2. *C. T. T.* 53.]

[If *A.* on Marriage conveys a Freehold, and alſo a Term for Years, to Truſtees, to raiſe a Sum for his Wife, and by his Will gives a Portion to his Daughter; his Son and Heir, Executor, ſhall not ſell the Term to pay his Wife, but it ſhall go to pay Debts and Legacies, and the Wife's be chargeable on the Freehold. *Lucy* v. *Gardiner*, *M.* 1723. *Bunb.* 137.]

So, if the Perſonal Eſtate is deviſed to *A.* and a Term veſted in Truſtees for Payment of Debts and Legacies; the Term ſhall be applied before the Perſonal Eſtate. *R.* 1 *Ch. R.* 47, 8.

[If Lands are deviſed to pay Debts, and ſimple Contract Creditors exhauſt Perſonal Eſtate, a ſpecifick or a pecuniary Legatee ſhall be paid out of the Land deviſed to pay Debts. *Haſlewood* v. *Pope*, *T.* 1734. 3 *P. W.* 322.]

[But if Lands are deviſed to *A.* in Fee, and ſpecific Legacy to *B.* and Bond-creditors come on ſpecific Legacy for Payment, *B.* ſhall not ſtand in Bond-creditor's Place, to charge the Land deviſed to *A.* for he is a *ſpecific* Deviſee as *B.* *ſpecific* Legatee. *Ibid.*]

[If *A.* purchaſes a Term for 1000 Years in Lands, and agrees to give a conſideration for the Inheritance, and Vendor covenants to procure Conveyance to Vendee and Heirs; *A.* dies before Conveyance made, leaving *B.* his Daughter 3000 *l.* and *C.* his Son Executor and Heir, who aſſigns the Term in Truſt to attend the Inheritance, and then takes Conveyance of the Inheritance to himſelf, then he confeſſes Judgment to one, mortgages the Inheritance to another, without taking Notice or aſſigning the Term, and dies Inſolvent; the Judgment ſhall firſt be paid, then the Mortgage, and then the 3000 *l.* to *B.* the Legatee, as *Adminiſtratrix to C.* her Brother, before the ſimple Contract Creditors. *Charlton* v. *Low*, *M.* 1734. 3 *P. W*, 328.]

[If a Man gives his *South-Sea* Bonds in Truſt, that his Executrix pay ſeveral Legacies, and gives all the Reſidue of his Eſtate to his Wife his Executrix, and the *South-Sea* Bonds are not ſufficient, they ſhall be paid out of the other Part of the Perſonal Eſtate. *Cooke* v. *Martyn*, *P.* 1737. 1 *Atkyns* 2.]

If there are not Aſſets for Debts and Legacies; the Debts ſhall be paid before Legacies to a Charity. *P. W.* 264.

But if Land is deviſed to the Heir in Tail, a Legatee ſhall not have Relief againſt the Heir, tho' the Perſonal Eſtate is exhauſted, by Payment of Debts upon Bond, *&c.* *R. Sal.* 416.

[If a Man by Will ſays, "As to my worldly Eſtate, I diſpoſe, *&c.*" and gives 100 *l.* to his Daughter, to be paid by his Son, his Executor, a Month after his Widow's Death, to whom he deviſes his Real Eſtate, with Houſhold Goods, and Stock in Trade, for Life, and then to his Son; and the Perſonal Eſtate is inſufficient, the Daughter's Legacy ſhall be paid out of the Real. *Lypet* v. *Carter*, *T.* 1750. 1 *Vezey* 499.]

[If *A.* leaves *B.* Money, ſhe leaving *C.* 500 *l.* at her Death, and *A.* dies, *C.* dies, *B.* dies, her Repreſentative cannot *ſet off* a Demand of *B.* on *C.* for the Demand is *in autre droit*. *Medlicot* v. *Bowis*, *H.* 1748. 1 *Vezey* 207.]

[Where the Uſe of Goods is given to one for Life, he muſt ſign an Inventory expreſſing them to be in his Cuſtody for Life only, and then to be delivered and remain to him in Remainder. *Slaning* v. *Style*, *M.* 1734. 3 *P. W.* 334.]

[The Inventory is to be depoſited with the Maſter; formerly Security was required. *Bill* v. *Kinaſton*, 1740. 2 *Atkyns* 82.]

How a Legacy ſhall be paid upon a Deviſe to pay Debts and Legacies. *Vide Ante*, (3 A. 3, *&c.*)

When a Legatee ſhall refund, or abate in Proportion, *Vide Ante*, 3 G. 3.) *Poſt*, (3 Y. 18, 19.)

(3 Y. 7.) How a Deviſe ſhall be conſtrued.

The Extent of the Words. *Vide Deviſe*, (N. 1, *&c.*) *Vide Ante*,

[If *A.* deviſes Money to the Relations of *B.* to be equally divided between them, it ſhall be confined to ſuch as would take by the Statute of Diſtributions, but they ſhall take *per capita*. *Thomas* v. *Hole*, *P.* 1 G. 2. *C. T. T.* 251.]

[If *A.* deviſes to his *near Relations*, it means ſuch as are within the Statute of Diſtributions. *Whithorn* v. *Harris*, *T.* 1754. 2 *Vezey* 527.]

[If a Man deviſe a Legacy to his *neareſt* poor Relations, it ſhall not extend to *all* his poor Relations, even that he knew. *Goodinge* v. *Goodinge*, *P.* 1749. 1 *Vezey* 231.

[If *A.* by Will declares he intends to diſpoſe of his Houſhold Goods by Codicil, and deviſes the Reſidue of his Perſonal Eſtate not diſpoſed of, or reſerved to be diſpoſed of, to his Wife, and makes a Codicil without diſpoſing of his houſhold Goods, they ſhall not go to the reſiduary Legatee, but according to the Statute of Diſtributions. *Davers* v. *Dewes*, *T.* 1730. 3 *P. W.* 40.]

[If *A.* bequeaths to his Grand-Children *B. C.* and *D.* 1000 *l.* each, and the Intereſt to their Uſe, and if any dies, to the Survivors or Survivor, *Share and Share alike*, the Intereſt to be paid to their Father, to be improved to their Uſe. *B.* dies an Infant, then *C.* dies; the Share which *C.* took by the Death of *B.* ſhall not ſurvive to *D.* but go to the Father, *C.*'s Adminiſtrator, both Principal and Intereſt; for *Share and Share alike* are *tantamount* to *equally to be divided*. *Rudge* v. *Barker*, *T.* 9 *G.* 2. *C. T. T.* 124.]

[If a Man gives all his Eſtate, Leaſes and Intereſt in his Houſe in *H.* and all the Goods therein, and all Plate, *&c.* to his Wife, but deſires her at her Death to give ſuch Leaſes, Houſe, Goods, *&c.* amongſt ſuch of his Relations as ſhe ſhall think moſt deſerving; and ſhe by Will gives her Intereſt in the Houſe to *A.* and after Legacies, the Reſidue of her Perſonal Eſtate to two whom ſhe makes Executors, and dies without giving the Goods, *&c.* to her Huſband's Relations, the Wife took only beneficially during her Life, and the Goods, *&c.* or the Value of them, ſhall be divided among the next of Kin of the Huſband. *Harding* v. *Glyn*, *T.* 1739. 1 *Atkyns* 469.]

[A Deviſe of Money to be divided among all the Children of *A.* does not extend to a Child born ſome Years after the Teſtator's Death. *Heathe* v. *Heathe*, *H.* 1740. 2 *Atkyns* 121.]

[If *A.* gives 3000 *l.* to Truſtees to place at Intereſt, or on a Purchaſe, and to permit his Wife to take the Profits during Life, and then to divide the whole Principal and Intereſt among his four Children, Share and Share alike, and the Survivors, but not before Twenty-one, or Marriage; if any die before, his Share to be divided among the Survivors, and one of them *B.* attains Twenty-one, but dies in the Mother's Life, her Repreſentative ſhall have her Share of what remains in Money, but not of what is veſted in Real Eſtates, which goes to the Heir at Law, *H.* 1740. 2 *Atkyns* 123.]

[If a Will directs that the Intereſt with the Principal of a Teſtator's Eſtate ſhall be ſettled on the Daughter, *or*, the Heirs of her Body, as the Executors think fit; they cannot give it *from* her to them, but the Word *or* muſt be conſtrued *and*. *Read* v. *Snell*, *T.* 1743. 2 *Atkyns* 642.]

[If the Reſidue of Real and Perſonal Eſtate is deviſed to Truſtees, to be ſettled on Teſtator's Daughter, and the Heirs of her Body, but in caſe ſhe die *leaving* no Heirs of her Body, then as to one Moiety to *A.* and his Wife, and their Heirs for ever, and as to the other, to *B.* and *C.*; this is a Gift to the Daughter for Life, with a contingent Remainder to ſuch Heir of her Body as ſhall be living at the Time of her Death, and the Deviſe over to *A. B.* and *C.* is good. *Ibid.*]

[If a Man by Will appoints the Intereſt to be made of his Perſonal Eſtate ſhall be paid to his Father for Life, then to his Mother for Life, and after their Deceaſe gives the Reſidue of his perſonal Eſtate to his Brother and Siſters, and the Siſters of his Wife, Share and Share alike, and if either dies before him, or the Survivor of Father and Mother, their Share to be divided among the Survivors of them; the Brother dies in Teſtator's Life, the Siſters in the Mother's Life, the Wife's Siſters are intitled to the whole Reſidue, to the accumulated Shares of the Perſons dead, as well as to their own original Shares. *Pain* v. *Benſon*, *P.* 1744. 3 *Atkyns* 78.]

[If a Man by Will beqeaths his Lands to his Wife *A.* for Life, then to *B.* Niece to my ſaid Wife; *Item*, I give the Uſe of 500 *l.* Stock for *her* natural Life, but after *her* Death I give the 500 *l.* among the Brothers and Siſters of my ſaid Wife;

the Wife and not the Niece ſhall have the 500 *l.* for her Life. *Caſtledon* v *Turner*, *T.* 1745. 3 *Atkyns* 257.]

[If a Man by Will gives Money to Truſtees, to pay the Intereſt to his Children, with other Directions, but makes no Proviſion for the Contingency of any of his Children dying without any Iſſue, but only that if the Iſſue of any of the Children ſhould die without Iſſue before Twenty-one, then their Share to be divided among his Children equally, and gives the Reſidue of his Eſtate to his Sons; and one of his Sons dies without Iſſue, his Share having never veſted in him, ſhall not go to his Repreſentative; and being a Share of a Sum divided from what Teſtator intended to be the Reſidue, it ſhall not go to the reſiduary Legatees, but ſhall go among the ſurviving Children. *Fonereau* v. *Fonereau*, *P.* 1745. 3 *Atkyns* 315.]

[If *A.* by her Will gives to her Nieces *B.* and *C.* each one Half of the Produce of Bank-ſtock, and *to their Iſſue*, and if either of them die before the Legacy becomes due, *and leave no Iſſue*, her Share ſhall go to the Survivor; and *B.* has a Son at the Time of the Deviſe, and dies before *A.* leaving a Son, this Son is intitled to a Moiety of the Produce of the Stock; for the Words relate to any Iſſue ſhe might leave at her Death. *Lampley* v. *Blower*, *M.* 1746. 3 *Atkyns* 396.]

[If a Man deviſes 5000 *l.* out of his Eſtate to be equally divided between his Children, with Remainder in the ſame Eſtate to his firſt and other Sons, and then to his Daughters; the eldeſt Son ſhall have a Share. *Incledon* v. *Northcote*, *H.* 1746. 3 *Atkyns* 430.]

[If a Man deviſes Lands to his Wife for Life, then to *A.* and the Heirs of his Body, and for Want of ſuch Iſſue to be ſold and divided among his Relations, according to the Statute of Diſtributions; and *A.* dies without Iſſue in the Lifetime of the Wife, ſhe is not intitled to any Share of the Diſtribution. *Worſely* v. *Johnſon*, *M.* 1753. 3 *Atkyns* 758. *Davis* v. *Baily*, *H.* 1747. 1 *Vezey* 84.]

[If a Man by Will gives 300 *l.* to the Children of his Siſter *S.* to be paid by his Executor, and equally divided at Twenty-one or Marriage, with Intereſt, and failing any, their Share to the Survivors, and failing all to *G.*; *S.* has but one Child at making the Will, it ſhall be conſtrued for the Benefit of all ſhe ſhall have. *Maddiſon* v. *Andrew*, *M.* 1747. 1 *Vezey* 57.]

[If a Man deviſes his Reſidue to be divided into Fifths, two Parts to *A.* and *B.* *or* their Iſſue, in Default to the Survivor, *or* their Iſſue, one Part to *C.* *or* his Iſſue, one Part to another Brother whoſe Name he has forgot, *or* his Iſſue, another Fifth to *D.* *and* her Children; it ſhall be conſtrued to ſuch Legatees, *or* their Iſſue, whom he knew not whether they had Children living or not; and to ſuch Legatees and their Children jointly whom he knew to have Children. *Le Farrant* v. *Spencer*, *T.* 1748. 1 *Vezey* 97.]

[If *A.* deviſes 10 *l.* a-piece to the Son and two Daughters by Name of *F. E.* then 300 *l.* to *B.* to be paid at Twenty-one, or Marriage, and Intereſt in the mean Time for her Maintenance; but if ſhe dies before, then to the younger Children of *F. E.* equally to be divided, the eldeſt Son to be excluded, and ſays nothing of Intereſt; this ſhall go to ſuch as are younger Children at the Death of *B.* *Elliſon* v. *Airey*, *T.* 1748. 1 *Vezey* 111.]

[If a Woman having a Power to appoint 4000 *l.* to her Kin, and for Default to go according to Statute, and by Will appoints to *A.* her Nephew, he paying Annuity to his Mother, and gives the Reſidue of her Eſtate to her Niece *B.* and *A.* dies in Teſtatrix's Life, the 4000 *l.* goes to *B.* *Oke* v. *Heath*, *M.* 1748. 1 *Vezey* 135.]

[If a Man by Will gives his Daughter *A.* Wife of *B.* 3000 *l.* for the Uſe of her younger Children, in ſuch Manner, Share and Proportion, as ſhe pleaſes, and if no Appointment, equally, and to ſurvive if any die under Age unmarried, it extends only to thoſe born at making the Will, or at moſt at Teſtator's Death. *Coleman* v. *Seymour*, *H.* 1748. 1 *Vezey* 209.]

[If a Legacy is given to younger Children, and after Teſtator's Death a Younger becomes the Elder, he ſhall nevertheleſs have his Share. *Ibid.*]

[If a Man deviſes Leaſehold to his Wife, for ſo many Years as ſhe ſhall live, then if Son *R.* is living, to him for ſo many Years as he ſhall live; but if then living, *and* ſhall then or afterwards have Iſſue-male, then to him abſolutely; but

if

if *R.* die in Wife's Life, without leaving Iſſue-male, then over; and *R.* dies in Wife's Life, it goes to his Repreſentative. *Jackſon* v. *Jackſon*, *H.* 1748. 1 *Vezey* 217.]

[If a Man deviſes all his Lands, *&c.* to his Wife for Life, then to his Daughter for Life, then to her Children, equally to be divided, and for Want of Children to his right Heirs on the Side of the *F.*'s; the Children take as Tenants in common for their Lives only, and each is intitled to a Share of the Profits from the Death of the Mother, tho' not born when the Will made. *Goodwyn* v. *Goodwyn*, *H.* 1748. 1 *Vezey* 226.]

[If a Man by Will gives a Daughter 4000 *l.* provided ſhe releaſes when at Age to her Brother *A.* her Share of an Eſtate under her Grandfather's Will, and ſhe receives Part of it, *A.* is intitled to her Share. *Ibid.*]

[If a Man deviſe in Truſt for his Son *A.* for Life, Remainder to ſupport, *&c.* Remainder to his firſt Son, and the Heirs of the Body of ſuch firſt Son, and for Default, *to ſecond, third, and fourth* ſucceſſively, in Remainder one after another; and *A.* has no Son at making the Will, has one who dies in Teſtator's Lifetime and then another, this laſt ſhall take as firſt Son, and he might alſo take by the Remainder to the ſecond Son. *Lomax* v. *Holmdon*, *T.* 1749. 1 *Vezey* 290.]

[If a Man gives 30,000 *l.* to his Wife, and after other pecuniary Legacies, the Reſidue of his Perſonal to his eldeſt Son *R.* except ſuch Legacies as he ſhall indorſe as a Codicil; and by ſuch Indorſement he directs that the 30,000 *l.* ſhould be to his Wife for Life only, and then to be divided among his Children as ſhe ſhould by Deed, Will, or Inſtrument in Nature of a Will, direct; and ſhe marries again, and in her ſecond Huſband's Life (having Power to diſpoſe) by Will appoints the Diſtribution of the Money, and two of the Children die in her Lifetime, their Shares go to the Repreſentative of *R.* the reſiduary Legatee, and ſhall not be divided among the Reſt of the Children. *D. of Marlborough* v. *E. Godolphin*, *M.* 1750. 2 *Vezey* 61.]

[If a Man gives a Sum to his Son *W.*'s younger Children to be paid at Twenty-one, and if any dies, to ſurvive to the others, it veſts in thoſe who are born at Teſtator's Death, and does not include thoſe born afterwards. *Horſley* v. *Chaloner*, *M.* 1750. 2 *Vezey* 83.]

If a Man deviſes *the Moiety of his Perſonal Eſtate*; the Moiety of Money, Bonds, and Leaſes paſſes. *R. Ca. Ch.* 16.

[Deviſe of Arrears of Intereſt paſſes Arrears of an Annuity. *Hele* v. *Gilbert*, *T.* 1752. 2 *Vezey* 430.]

If he deviſes his *Worldly Eſtate*, viz. *That Debts be paid, and my Wife have a Moiety of what is left; and the remaining Part of my Eſtate Real and Perſonal, I give to my Brother*; *R.* that the Wife ſhall have a Moiety of the Real and Perſonal Eſtate, after Debts paid. 2 *Ver.* 690.

[If a Man by Will deviſe all his Lands in *W.* to his Siſter *A.* for Life, with Remainders over, then to her Huſband *B.* for Life, then to *C.* for Life, with Remainders over, and makes *A.* and *B.* and another Executors, and directs the Surplus of his Perſonal to be laid out in Lands to be ſettled to the ſame Uſes; and by his Codicil gives *C.* an Annuity out of the Freehold Lands, limited to him till they come to be poſſeſſed by him, and reciting his Will, directs that his Dwelling-Houſe after the Death of *A.* ſhould come to *B.* *but the Reſt* of the Lands thereby given to *B.* he directs the Profits of them to be divided between *B.* and *C.* and *C.*'s Annuity to be taken as Part of his Dividend; *C.* is not intitled to the Moiety of the Intereſt of the Surplus of the Perſonal Eſtate during the Life of *B.* after the Death of *A.* *Beauclerk* v. *Mead*, *P.* 1741. 2 *Atkyns* 167.]

If a Man deviſes *all his Houſhold Goods*, his Plate paſſes. 2 *Ver.* 638.

Or, *all his Furniture and Pictures*. *R.* 2 *Ver.* 512.

If a Man deviſes *all his Perſonal Eſtate in W.* to *A.* it will be a Specific Legacy, and will give all his Goods, Coaches, Horſes, and all that he had at that Place. *R.* 2 *Ver.* 688. *Eq. R.* 87.

[If *A.* deviſes to his Nephew and others Truſtees 6000 *l. South-Sea* Annuities, to be laid out on Lands to be ſettled on *B. &c.* and by Codicil taking Notice of this gives 1200 *l.* to the ſame Uſes, and makes his Nephew Executor, and dies poſſeſſed

poſſeſſed of large Perſonal Eſtate, but only 5360 *l.* *South-Sea* Annuities when he made the Will; this is a Specific Legacy, and the 5360 *l.* ſhall not be made up 6000 *l.* out of the Perſonal Eſtate. *Aſhton* v. *Aſhton*, *M.* 9 *G.* 2. *C. T. T.* 152. 3 *P. W.* 384.]

[But if *A.* deviſes 1000 *l.* *South-Sea* Stock to his Wife, he having then 1800 *l.* afterwards reduces it to 200 *l.* then makes it up 1600 *l.* then the Act takes place, changing Three-fourths of the *South-Sea* Stock into Annuities, and Teſtator dies, having 400 *l.* Stock, and 1200 *l.* Annuities, the Wife ſhall have the whole Legacy of 1000 *l.* *Partridge* v. *Partridge*, *M.* 10 *G.* 2. *C. T. T.* 226.]

[If a Man deviſes to *A.* 400 *l.* (without the Word *my*) *Eaſt-India* Bonds, to pay the Intereſt to *B.* till Twenty-one or Marriage, then to pay the ſaid 400 *l.* *Eaſt-India* Bonds to her; and recites this Bequeſt in Codicil, and another of three Exchequer Orders, which he has ſince diſpoſed of, and ſubſtitutes a pecuniary Legacy for theſe Orders, and only one *Eaſt-India* Bond is found at his Death, it is not Specific, but a Bequeſt of Quantity, and ſhall be made good from the Reſidue. *Sleech* v. *Thorington*, *T.* 1754. 2 *Vezey* 360.]

[If a Sum of *South-Sea* Annuity-ſtock, or *South-Sea* Annuities is given to ſeveral Perſons in ſeveral Proportions, and 13.13 the Remainder thereof to *A.* and there is a Deficiency, it is Specific, and ſhall not be made good from the Reſidue, but all the Parties muſt abate in proportion. *Ibid.*]

If he deviſes 15 *l.* *a-piece to each of his Relations on the Part of his Father and Mother:* Payment of 15 *l.* to *A.* and 15 *l.* a-piece to each Child of *A.* will be good; tho' it is not conformable to the Diſtribution upon the *Statute for the Diſtribution of Inteſtates Eſtates.* 2 *Ver.* 381.

So, a Deviſe of *his Perſonal Eſtate in W.* to *A.* gives him the Rents, due at his Death, of the Lands in *W.* *Eq. R.* 87.

Tho' it be *all his Perſonal Eſtate, except his Bedding*; for that does not reſtrain the Words to Furniture. *Eq. R.* 88.

[A Deviſe of the Rents and Profits of an Eſtate to a Huſband for Life, without Impeachment of Waſte, enables him to cut Timber. *Partridge* v. *Pawlet*, *H.* 1737. 1 *Atkyns* 467.]

If a Man deviſes his Bond, Debt, *&c.* the Money due paſſes.

And the Intereſt, as well as the Principal, due upon the Bond.

If a Man deviſes *all his Houſhold Goods, Money, and Plate*; this gives all Money due upon Mortgage or Security, but not his *South-Sea* or *Annuity* Stock (being as a Chattel Real). *Per Gilbert Ch. B. Eq. Ca.* 203. *Dub. per me*, being coupled with the Houſhold Goods, whether it extended beyond Money in the Houſe.

[A Deviſe of 200 *l.* ſecured on Mortgage on the Eſtate of *A.* and all Meſſuages, Lands, and Tenements, for ſecuring the ſame, paſſes the Principal only. *Roberts* v. *Kuffin*, *M.* 1740. 2 *Atkyns* 112.]

[If a Father leave his Daughter a Money Legacy, and then deviſes to her all Goods and Things, of every Kind and Sort whatever, found in her Cloſet at his Death, this does not paſs Money found there. *Ibid.*]

[Goldſmiths Notes, and Bank Bills do not paſs by a Deviſe of Mortgages, Ground-Rents, Judgments, *&c.* whatever I have or ſhall have at my Death, as Plate, Jewels, Linen, Houſhold Goods, Coach and Horſes. *Timewell* v. *Pirkins*, *M.* 1740. 2 *Atkyns* 102.]

[Bank Notes will not paſs by the Word *Securities*, but muſt be conſidered as Caſh; Dividends paid into the Bank where Teſtator kept his Caſh are not Dividends due and received by him. *Southcot* v. *Watſon*, *T.* 1745. 3 *Atkyns* 226.]

[If one ſeized of Lands in *A.* and poſſeſſed of a Term for Years in *B.* deviſes all his Lands and Real Eſtate in *A.* and *B.* to *S.* and his Heirs, and then diſpoſes of his Perſonal Eſtate, this will not paſs the Term to *S.* *Davis* v. *Gibbs*, *H.* 1729. 3 *P. W.* 26.]

If he deviſes to his Wife 1200 *l.* *and all the Goods, Chattels, Plate, Jewels, Houſhold Stuff, and Stock in and belonging to his Houſe*; 400 *l.* in his Houſe does not paſs. *Pr. Ch.* 8.

[*Current Coin*, if curious Pieces, and kept with Medals, will paſs as ſuch. *Bridgeman* v. *Dove*, *M.* 1744. 3 *Atkyns* 201.]

[A Library of Books, whether ſmall or great, will not paſs as Furtiture. *Bridgeman* v. *Dove*, *M.* 1744. 3 *Atkyns* 201.]

[If one deviſes to his Wife all his Houſhold Goods, and other Goods, Plate and Stock, within Doors and without, and bequeaths the Reſidue of his Perſonal Eſtate to *B.* the Teſtator's ready Money and Bonds do not go to the Wife; for then the reſiduary Bequeſt would be void. *Woolcomb* v. *Woolcomb*, *P.* 1731. 3 *P. W.* 112.

If *A* ſettles a Houſe upon his Daughter for Life, and afterwards to others, and by his Will deviſes *all the Goods, Furniture, and Ornaments in the Houſe, to ſuch Perſons as the Houſe was to go to after his Death*; the Daughter ſhall not have the Property and Diſpoſal of the Goods, but the Uſe only for her Life. *R. Pr. Ch.* 26.

If he deviſes to his Wife *his Rings, and Houſhold Goods*; Plate uſed in the Houſe doth not paſs. *Pr. Ch.* 207.

[If a Woman ſays, I give to *B.* all my Goods, wearing Apparel of what Nature and Kind ſoever, except my Gold Watch; Houſhold Goods, wearing Apparel and Ornaments of the Perſon, only paſs, but not the Reſidue. *Crichton* v. *Symes*, *T.* 1743. 3 *Atkyns* 61.]

If he ſays, *the Furniture and Pictures in my Houſes in A. and B. ſhall go with my Houſes, and my Chapel Plate, to my Chapel*; tho' *Furniture* generally includes *Plate*, yet Plate carried for his Uſe from one Houſe to another, does not go with his Houſes; for here it is diſtinguiſhed from his Furniture. *R. Pr. Ch.* 251. *Eq. Abr.* 200.

[*China* paſſes under the Word *Furniture*, unleſs the Deviſe is by a Shop-keeper. *Hele* v. *Gilbert*, *T.* 1752. 2 *Vezey* 430.]

If he deviſes to *A. his Silver Tea-kettle and Lamp with the Appurtenances*; the Silver Tea-pot, Milk-pot, Tongs and Caniſters do not paſs. *R.* 1728. *Eq. Abr.* 201.

So, if he deviſes *all his Goods, Chattels, Furniture, Houſhold Stuff, and other Things which then were or ſhould be in his Houſe at his Death*; 265 *l.* ready Money, in the Houſe at his Death does not paſs; for *other Things* import others of like Nature. *R.* 1724. *Eq. Abr.* 201.

[If a Man deviſes all his Eſtate, Real and Perſonal, to Truſtees on Truſt, as to ſo much of his Perſonal as ſhall be on his Seat at *P.* to ſuffer his Wife to enjoy during Life; a Sum of Money in the Houſe does not paſs, but all Stock, live and dead, and all Stores on the Lands in Hand, do paſs. *Incledon* v. *Northcote*, *H.* 1746. 3 *Atkyns* 430.]

If he deviſes ſo much Money *to all the Hoſpitals*; it extends only to all the Hoſpitals in the Town, *&c.* where he lives, if there are any there. *P. W.* 425.

[If *A.* gives 100 *l.* to each of the *public* Charities mentioned in the Will of *B.* this includes Charities not confirmed by Charter, as to the Poor of a Pariſh, or poor Houſekeepers, at the Diſcretion of an Executor; the Extenſiveneſs makes it *public*. *Attorney.general* v. *Pearce*, *M.* 1740. 2 *Atkyns* 87.]

But, if a Man deviſes *all his moveable Goods and Chattels*, his Debts do not paſs. *R. Jon.* 225.

If he deviſes *all his Furniture at his Houſe at B.* Goods pack'd up, to be ſent and uſed for Furniture there, do not paſs. *R.* 2 *Ver.* 739.

Nor Goods removed from the Houſe by Accident, by reaſon that the Leaſe of the Houſe was ſurrendred or expired, if done without Fraud in the Party. *R.* 2 *Ver.* 747.

[If Captain of a Man of War deviſes all his Goods on board the Ship *A.* and they are removed to Ship *B.* before his Death, yet they paſs; tho' in Caſe of a Deviſe of Goods in a Houſe it is otherwiſe, unleſs they were removed on account of Fire, and Teſtator dies ſoon after. *Chapman* v. *Hart*, *T.* 1749. 1 *Vezey* 271.]

So, if a Man agrees that his Wife ſhall not have any of his Perſonal Eſtate, *except the Houſhold Goods and Furniture at his Death*; and he has two Houſes, one in which he lives, and the other for the Uſe of Seamen; the Wife ſhall have the former only. 2 *P. W.* 302, 304.

If an Upholſterer deviſes *his Houſhold Goods*, thoſe in his Shop do not paſs. 2 *P. W.* 303.

[A De-

[A Deviſe by an *India* Captain of all Houſhold Furniture, Linen, Plate, and Apparel whatſoever, includes only what is for Domeſtick Uſe, not what is for Trade or Merchandiſe. *Le Farrant* v. *Spencer*, *T.* 1748. 1 *Vezey* 97.]

So, if a Man deviſes *his Utenſils*; Plate and Jewels do not paſs. *R. Dy.* 59. *b.*

[A Deviſe of Houſhold Goods and Implements of Houſhold does not paſs Malt, Hops, Beer, or Victuals in the Houſe, nor Guns and Piſtols uſed in riding or ſhooting Game; but a Clock in the Houſe not fixed to it paſſes. *Slanning* v. *Style*, *M.* 1734. 3 *P. W.* 334.]

[If a Man poſſeſſed of a Leaſe of a Farm, *Malthouſe*, *&c.* at 40*l. per Annum*, gives to his Wife all his Houſhold Goods, Cattle, Corn, Hay, and Implements of Huſbandry and Stock belonging to his Houſe, Meſſuage, Farm, and Premiſſes in ſaid Leaſe, and ſhe to pay the 40*l.* Rent; the Stock in the Malt Trade paſſes. *Brooksbank* v. *Wentworth*, *T.* 1743. 3 *Atkyns* 64.]

If by Will he acquits his Servant of *all Debts*, *Accounts*, *and Demands*; a Trunk, in which there are Jewels, *&c.* in the Cuſtody of the ſame Servant, is not thereby deviſed to him. *Semb.* 2 *Ver.* 114.

If he deviſes to his Wife *all his Jewels*; his Collar of *SS*, and Garter, or Diamonds faſtned to the Bonnet or Robes do not paſs. *R. Owen* 124.

If he deviſes *all his Houſhold Goods*; Plate commonly uſed in the Family paſſes. *P. W.* 425.

[If a Man by Will deviſes all his *Plate* to his Wife, and by his Codicil gives her the Uſe of his *Houſhold Goods* for Life only; if it appears the Plate was uſed in his Houſe, the Words Houſhold Goods include the Plate, and ſhe ſhall have it for Life only. *Snelſon* v. *Corbet*, *T.* 1746. 3 *Atkyns* 369.]

So, if *A.* deviſes 200*l. to each of his three Daughters, and if any die without Iſſue, her Part to go to the Survivors*; if any marries and dies without Iſſue, her Part does not ſurvive; for Money cannot be intailed. *R.* 2 *Vent.* 349.

[If *A.* gives Three-fourths of his Perſonal Eſtate to his three Sons, equally to be divided, and deviſes the other Fourth to his Sons in Truſt for his two Daughters, the Intereſt to be paid to them reſpectively during their Lives, *and afterwards to their or either of their Child or Children*, and for Default to his three Sons, equally to be divided; and one of the Daughters dies, leaving a Son, the other without Iſſue, her Moiety ſhall go to the Son of the other. *Stephens* v. *Hide*, *P.* 7 *G.* 2. *C. T. T.* 27.]

If a Man deviſes 10*l to each Servant living with him at his Death*; it does not extend to the Steward of a Court, or ſuch a one, who ſerves many others beſides the Teſtator. *R.* 2 *Ver.* 546.

[If a Man gives 100*l.* to *the two* Servants living with him at the Time of his Death, and has only two at making the Will, but takes a third, and all three live with him at his Death, the 100*l.* ſhall be divided among them all. *Sleech* v. *Thorington*, *T.* 1754. 2 *Vezey* 560.]

If he deviſes ſo much Sugar to be paid at ſuch a Time; if it is not paid at the Time, the Executor ſhall be decreed to pay the Value with Intereſt. *R.* 2 *Ver.* 553.

If he deviſes *Land and Money to his Wife; provided, if ſhe dies without Iſſue,* 80*l. ſhall go to his Brother, after the Death of his Wife:* If ſhe has no Iſſue at her Death, the 80*l.* ſhall go to his Brother, for it ſhall be intended to be immediately upon her Death. *R.* 2 *Ver.* 758, 766.

[If *A.* by Codicil gives to *B.* during her natural Life his Houſe, *with* all the Goods therein, the Deviſee has no larger Intereſt in the Goods than in the Houſe. *Leeke* v. *Bennet*, *H.* 1737. 1 *Atkyns* 470.]

[If a Man covenants to lay out a Sum in Lands, and deviſes his Real Eſtate before ſuch Purchaſe made, the Money agreed to be laid out will paſs to the Deviſee. *Green* v. *Smith*, *M.* 1738. 1 *Atkyns* 572.]

[If a Man, having made his Will, enters into a Contract for Purchaſe of Land, the Lands contracted for will not paſs by the Will, but deſcend. *Ibid.*

[If an Anceſtor after making his Will agrees for the Purchaſe of particular Lands, the Heir at Law ſhall have them if good Title can be made, otherwiſe not, nor ſhall he in that Caſe have the Money. *Ibid.*]

[The

[The Word *Eſtate*, paſſes not only Land, but all the Intereſt the Teſtator has in it, tho' there is a Locality. *Tuffnal* v. *Page*, *P.* 1740. 2 *Atkyns* 37.]

[If *A.* deviſes Lands to Truſtees to receive the Rents, and pay them to his Wife for Life, and to permit her to charge them with 200 *l.* then to *B.* for Life, then to *C.* for Life, charged and chargeable as aforeſaid, and after Determination of theſe Eſtates, to *D.* his Heirs, *&c.* charged and chargeable with 1000 *l.* a-piece to his ſix Nieces, to be paid to them reſpectively in twelve Months after his Death, and to be raiſed by the Truſtees in like Manner; the Words *charged* and *chargeable* run over the particular Eſtates as well as the Fee, and the Legacies ſhall be paid twelve Months after the Death of *A.* *Carter* v. *Carter*, *M.* 1748. 1 *Vezey* 168.]

If he deviſes *his Perſonal Eſtate and the Produce of it to his Son, and if he dies before Twenty-one or Marriage, to his Brother*: If the Son dies before Twenty-one, the Brother ſhall have only the Capital, not the Produce in the Life-time of the Son. *R.* 1 *P. W.* 503.

[If Perſonal Eſtate is deviſed to *A.* the Produce of it (after Maintenance) to be laid up till he is Twenty-one, and if he dies before Twenty-one, and his Mother has no Children, then all the Legacies and Bequeſts to *A.* to go to *B.*; *A.* dies before Twenty-one; the Produce from the Death of *A.* ſhall accumulate and be added to the Capital, and if the Mother dies without Children goes to *B.* *Studholme* v. *Hogdſon*, *T.* 1734. 3 *P. W.* 300. *Green* v. *Ekins*, *M.* 1742. 2 *Atkyns* 473.]

[If a Mother gives all her Real and Perſonal Eſtate to her Daughter and her Heirs; but if ſhe die before ſhe is of Age to diſpoſe thereof then gives the ſame to Truſtees to raiſe 6000 *l.* for a Charity, the Reſidue thereof, if her Daughter dies unmarried, to her (Teſtatrix's) Siſters; and the Daughter marries, has a Daughter, and dies aged Twenty, her Huſband ſhall have the Perſonal Eſtate, as ſhe was of Age to diſpoſe of that at Fourteen; the Real Eſtate ſhall ſatisfy the 6000 *l.* and ſubject thereto go to the Huſband for Life as Tenant by Curteſy, and then to his Daughter in Fee. *Bellaſis* v. *Uthwatt*, *H.* 1737. 1 *Atkyns* 426.]

[If one deviſes Lands to Truſtees to be ſold, and the Money to be laid out in Lands or Stock, in Truſt to permit *A.* to receive the Profits during Life, then in Truſt for *the Uſe of the Iſſue* of the Body of *B.* with Remainders over, the Money muſt be laid out in Land, *B.* has only an Eſtate for Life, Iſſue takes in Male and Female, and there muſt be croſs Remainders to the Females. *Meure* v. *Meure*, *P.* 1737. 2 *Atkyns* 265.]

[If a Man by Will creates a Term in Truſt by the Rents and Profits, or by Mortgage, to raiſe Portions for the Daughters of his Son *A.* payable at Eighteen or Marriage, with a Maintenance in the mean Time, with a Power to *A.* to make a Jointure of all the Premiſſes, the Portions cannot be raiſed ſo as to affect the Jointreſs, but ſhall be raiſed by Mortgage of the Reverſion, with Intereſt from the Time they were payable. *Hall* v. *Carter*, *T.* 1742. 2 *Atkyns* 354.]

[If a Man gives all his Real and Perſonal Eſtate to *A.* and *B.* equally between them for Life, and on the Death of *A.* the whole Eſtate to *B.* in Tail-general, and for want of ſuch Iſſue to *C.* in Fee, and gives pecuniary Legacies chargeable on the Real, if the Perſonal not ſufficient; and then gives all the Reſidue of his Perſonal Eſtate to *D.*; *D.* ſhall have it and not *B.* *Ulrich* v. *Litchfield*, *T.* 1742. 2 *Atkyns* 372.]

[If Money is deviſed to Truſtees, to be laid out in the Purchaſe of an Annuity *clear* for *A.* it means an Annuity free from Taxes, *Hodgeworth* v. *Crawley*, *T.* 1742. 2 *Atkyns* 376.]

[If a Man makes his Will in *Jamaica*, and gives ſeveral Legacies to be paid in *Sterling* Money, then two Legacies generally without mentioning *Sterling*, then deviſes Real Eſtate and Specific Legacies, then other Legacies in *Sterling*, and dies, leaving Effects in *England*, and in *Jamaica*, the two Legacies muſt be paid in *Jamaica* Currency only, tho' one of the Legatees lives in *England*. *Saunders* v. *Drake*, *M.* 1742. 2 *Atkyns* 465.]

[As long as the Fund exiſts upon which a Legacy is charged, tho' it devolves to the Heir or Executor, yet they ſhall take it ſubject to the Charge; therefore if *A.* ſays that what his Perſonal falls ſhort of paying Legacies, he charges on his

Lands, and then gives to *B.* the Houſhold Goods in the Schedule annexed, he paying certain Annuities, and annexes no Schedule, the Houſhold Goods in the Executor's Hands ſhall be firſt applied, then the Perſonal, and then the Lands. *Hills* v. *Wirley*, *T.* 1743. 2 *Atkyns* 605.]

[Legacies of the ſame Specific Thing, in different Codicils are only Repetitions; ſo of the ſame Sum of Money, or Quantity of Things; Legacies in the laſt Codicil greater than in the firſt are not additional ſeveral Legacies, but Augmentations of the firſt, and if ſmaller, Diminutions of the firſt. *D. of St. Albans* v. *Beauclerk*, *P. and T.* 1743. 2 *Atkyns* 636.]

[If a Mother by Will gives her Daughter 30*l. per Annum* whilſt unmarried, by 15*l.* at *May-Day*, and 15*l.* at *All-ſaints*, and ſhe marries before the Half-Year's Payment becomes due, ſhe ſhall be paid *pro Rata* till the Time of the Marriage. *Reyniſh* v. *Martin*. *P.* 1746. 3 *Atkyns* 330.]

[If a Man deviſes all his Plate, Books, Pictures, and Houſhold Goods to ſuch Male (when Twenty-one) as ſhall then be intitled to the Truſt in Poſſeſſion of his Real Eſtate, and till then the ſaid Plate, *&c.* ſhould be kept at *D.* and uſed by ſuch Male reſiding there, declaring, his Will to be, that ſaid Plate, *&c.* may go as Heir-looms with his Eſtate as long as the Law will permit; they ſhall go as Heir-looms, for the Deviſe is only a Diſpoſition of the Uſe till the Perſon intitled to the Inheritance attains Twenty-one. *Trafford* v. *Trafford*, *T.* 1746. 3 *Atk.* 347.]

[If a Man by Will, reciting that he has ſettled his Eſtate on *A.* for Life, to his firſt and other Sons in Tail Male, and then to be ſold, and the Money divided between four Perſons, then directs that his Houſhold-ſtuff at *H.* ſhould remain and continue there for the Uſe of ſuch Perſon or *Perſons* as ſhall enjoy the Eſtate by the Settlement, to be delivered to him or *them* by his Executor, when the Perſon is capable of giving a Diſcharge, and in the mean Time his Executor to take Care of them; they ſhall not be ſold as *Heir-looms* with the Houſe, but go to the Repreſentative of *A.* the firſt Taker. *Wyth* v. *Blackmen*, *H.* 1748. 1 *Vezey* 196.]

[If Books are deviſed to Tenant in Tail, they are not Heir-looms, but his Property as firſt Taker. *D. Bridgewater* v. *Egerton*, *H.* 1750. 2 *Vezey* 121.]

[If a Man deviſes a Houſe and Appurtenances to his Wife during Widowhood, but that his Son when Twenty-one, or married, might have it, paying, *&c.* and ſhe marries, and he is not Twenty-one, when Twenty-one he may have it; the intervening Intereſt is undiſpoſed of, and goes to the reſpective Reſidues Real and Perſonal. *Ibid.*]

[If a Huſband who is bound to leave his Wife 500*l.* by Will, and having no *India* Stock; but his Wife being intitled to 700*l.* Bank-Stock *in Autre Droit*, which ſhe afterwards transfers to him, and it ſtands in his own Name, if he leaves his Wife 700*l. India* Stock, the 700*l.* Bank ſhall paſs by it. *Door* v. *Geary*, *T.* 1749. 1 *Vezey* 255. 1 *Wilſ.* 247.]

[If a Man by Will gives an Annuity in Fee, a Jointure and other Legacies, and ſubject thereto 200*l. per Annum* to his Daughter till of Age, or Married, and then directs his Executors to intail on his Daughter all his Eſtate and Effects; it is ſubject to the Annuities; but the Profits accumulated ſhall not be ſettled, but belong to the Daughter. *E. Stafford* v. *Bulkeley*, *H.* 1750. 2 *Vezey* 170.]

[If the Reſidue of Perſonal Eſtate is given to *A.* if he attains Twenty-one, the Profits ſhall accumulate till then. *Trevanion* v. *Vivian*, *T.* 1752. 2 *Vezey* 430.]

[If a Man deviſes the Reſidue of his Perſonal Eſtate to his Executors, who receive ſome Part, and divide it among themſelves, and then one dies, the Survivors ſhall have all the Surplus not already divided. *Willing* v. *Baine*, *T.* 1731. 3 *P. W.* 113.

[A Deviſe to a Wife of Houſhold Goods, Plate, Jewels, Linen, *&c.* for Life, intitles her to uſe them any where, or to let them out to hire. *Marſhul* v. *Blew*, *M.* 1741. 2 *Atkyns* 217.]

[If a Man by Will gives and bequeaths to his Wife all his Houſhold Goods, *&c.* in or belonging to his Houſe, and alſo the ſaid Houſe, Gardens, and Land thereto belonging, ſo long as ſhe continues his Widow, and no longer, and alſo gives her his Jewels, Coach, *&c.* the Houſhold Goods, *&c.* are under the ſame Reſtrictions as the Houſe, but the Jewels, Coach, *&c.* are her abſolute Property. *Richards* v. *Baker*, *T.* 1742. 2 *Atkyns* 321.]

(3 Y. 8.) When a Deviſe gives a preſent Intereſt.

Vide Deviſe, (N. 18.).

If a Man deviſes 100 *l.* *to another, to be paid at his Marriage, or the Age of Twenty-one Years*; this is an immediate Legacy; and if he dies before Marriage or full Age, it ſhall be paid to his Executor. *R. Ch. R.* 112. *R.* 2 *Vent.* 342, 366. *R. Dy.* 59. *b. in Marg. Vide* 2 *Ver.* 395.

So, if he deviſes 100 *l.* *to another at his Age of twenty-one Years to be paid with Intereſt.* *R.* 2 *Vent.* 342. *Skin.* 147. 2 *Ver* 137. *R.* 2 *Ver.* 508, 673.

So, if he deviſes *to his Daughter for her Marriage.* *R. Dy.* 59. *b.* 1 *Ver.* 205, 324.

If he deviſes *to his Daughter to be paid at the Age of Twenty-one*; if ſhe marries at Eighteen, the Portion ſhall be paid. 2 *Ver.* 424.—Otherwiſe, if he deviſes Land *to his Son, with a Charge to pay to his Daughter, at her Age of twenty-one Years.* *R.* 2 *Ver.* 617.

So, if he deviſes Portions *to A. B. and C. his Daughters, to be paid at their reſpective Marriages, and if any of them die, her Part to go to the Survivors*; *A.* dies; her Part does not go to her Siſters 'till their Marriage, though the Words are not repeated. *R.* 2 *Ver.* 620.

But if a Man deviſes to another *at his Age of twenty-one Years*, without more; if he dies before that Age it ſhall not be paid. *R.* 2 *Vent.* 342. *Acc. Dy.* 59. *b.*

And a Deviſe, *at the Age of Twenty-one*, or, *to be paid at Twenty-one*, is *tantamount.* 2 *Ver.* 417. *R. Eq. R.* 12.

So, if he deviſes Money to another *to be paid at the Age of Twenty-one, but if he dies before that Age it ſhall go to A.* if both of them die before the firſt attains his full Age, the Money ſhall not be paid to the Executor of the firſt, but to the Executor, or Adminiſtrator of *A.* *R.* 2 *Vent.* 347.

If he deviſes, *at the End of ten Years*, tho' the Event is certain, and not contingent, as Marriage, or the Age of Twenty-one, it is a lapſed Legacy. *Per Cowper, Sal.* 415.

So, if he deviſes, *at the Age of Twenty-four*, and the Executor pays Part, at Twenty-one, and gives a Bond for the Reſidue; it ſhall be repaid. *Dub.* 2 *Ver.* 31.

If a Man deviſes, *that all his Perſonal Eſtate after his Debts and Legacies paid, ſhall be laid out in the Purchaſe of Land*; all, but ſo much as is ſufficient for the Payment of the Debts and Legacies, ſhall be immediately laid out for the Purchaſe. 2 *Vent.* 346.

If he deviſes Land to *A. upon Condition that he pays* 400 *l.* *of which Sum his Wife ſhall diſpoſe of* 200 *l.* *by her Will*; if the Wife makes no Will, the 200 *l.* goes to her Adminiſtrator. *R.* 2 *Ver.* 181.

If he deviſes *all his Perſonal Eſtate to his Wife, and* 1000 *l.* *to his Grandſon at the Age of Twenty-one or Marriage*; the Grandſon ſhall have the 1000 *l.* immediately upon the Contingency, and not wait for the Death of the Wife. *R. Eq. Ca.* 93.*

* 2d Part of 2 *Mod. Ca.*

But if a Deviſe be, that *the Perſonal Eſtate ſhould be applied for a Purchaſe within one Year, or otherwiſe ſhould be paid to ſome Infants equally to be divided*; the Intereſt in the Perſonal Eſtate does not veſt in the Infants till the Year is paſſed, and if one of the Infants dies in the mean Time, ſhall not go to his Executor. *R.* 2 *Vent.* 356.

[If *A.* deviſes to his Daughter *B.* 200 *l.* to be paid at her Marriage, or three Months after, provided ſhe marry with his Son's Approbation, and gives her 12 *l.* *per Annum* till ſhe marry, and ſhe dies of Age, but not married, the Legacy is not veſted, and the Adminiſtrator of *B.* can make no Title to it. *Atkins* v. *Hiccocks, T.* 1737. 1 *Atkyns* 500.]

[If *A.* intitled to the Reverſion of an Eſtate after the Death of his Wife deviſes it to *B.* and his Heirs ſo as he ſhould pay to *C.* 100 *l.* within ſix Months after the Reverſion comes into Poſſeſſion, and gives the Reſidue of Perſonal to *B.* and another whom he makes Executors; and *C.* dies in the Wife's Lifetime, the Legacy is not veſted, nor the Repreſentative of *C.* intitled to it. *Hall* v. *Terry, M.* 1738. 1 *Atkyns* 502,]

[If

[If *A.* gives Part of his Stock and Trade to *B.* provided he attains Twenty-one, and *B.* dies before it, his Adminiſtrator is not intitled to the intermediate Profits between the Deaths of *A.* and of *B.* *Atkinſon* v. *Turner*, *T.* 1740. 2 *Atkyns* 41.]

[If a Man gives to his Brother *B.* the Intereſt of 1500 *l.* during his Life, and from his Death the ſaid 1500 *l.* among all the younger Sons and all the Daughters of *B.* but if only Daughters, then among the younger Daughters, to be paid at Twenty-one, but that no elder Son, if more than one, nor elder Daughter, if only Daughters living at *B.*'s Death, ſhall have any Share; and *C.* one of *B.*'s Daughters, marries, attains Twenty-one, and dies before *B.* and then he dies; her Repreſentative is not intitled to a Share, for the Legacy does not veſt till *B.*'s Death. *Billingſley* v. *Wells*, *T.* 1745. 3 *Atkyns* 219.]

[If a Man by Will gives his Grand-Daughter 1500 *l.* to be at her own Diſpoſal if ſhe marries with Conſent, and not otherwiſe, and ſhe dies at Fourteen unmarried, the Legacy does not veſt; for in all Caſes where the Condition of marrying is annexed, there muſt be a Marriage to veſt the Legacy. *Elton* v. *Elton*, *P.* 1747. 3 *Atkyns* 501. 1 *Vezey* 4. 1 *Wilſon* 159.

[If a Grandfather deviſes his Eſtate to his Son for Life, with Power to raiſe a Sum not exceeding 3000 *l.* for younger Children, and to fix Time of Payment and Intereſt, and if no Appointment, the Eſtate to be charged with 3000 *l.* payable to Sons at Twenty-one, to Daughters at Twenty-one or Marriage, nothing veſts in the Father's Life; therefore the Repreſentative of one who attains Twenty-one, and becomes eldeſt Son, and dies in his Father's Life, is not intitled to a Share. *Loder* v. *Loder*, *T.* 1754. 2 *Vezey* 526.]

If there be a Deviſe of 400 *l.* *to the Children of A.* who has three Daughters, and two of them die under Age; their Shares go to their Adminiſtrators. *Eq. Ca.* 106.*

So, if a Man deviſes *Portions to younger Children to be paid at their full Age*, and the Infant dies before; the Money goes to the Executor or Adminiſtrator of the Infant. *R.* 2 *Vent.* 342. *R. ibid.* 366. 1 *Ver.* 205, 324, 462.

So, if he *deviſes Portions to them to be paid out of his Land.* *R.* 2 *Vent.* 367. Where the Portion is veſted, 2 *Ver.* 508.

But if a Man *ſettles Land for the Payment of Portions to younger Children to be paid at full Age*; and one dies before; his Portion ſhall go to the Heir of the Land, and not to the Adminiſtrator of the Infant: For the Land is only truſted with the Payment. 2 *Vent.* 367. 2 *P. W.* 276. *Vide Ante*, (3 P. 3.)

So, if by the Settlement he refers to his Will, and by his Will deviſes the ſame Portions to be paid *according to the Settlement.* *R.* 2 *Vent.* 367. 2 *Ver.* 439.

So, if a Legacy is to be paid at the full Age of an Infant, if it does not carry Intereſt, tho' it be veſted, the Executor ſhall not have it till the Infant would have been Twenty-one. 2 *Ver.* 199. 2 *P. W.* 277.

[If a Legacy is to be paid to an Infant at his Age of Twenty-four, and a certain Maintenance in the mean Time, his Executor ſhall not have it till the Infant would have been Twenty-four; but if it had carried Intereſt, he would have had it immediately. *Harriſon* v. *Buckle*, *M.* 6 *G. Str.* 238.]

[If Lands are deviſed to Truſtees to raiſe and pay 1500 *l.* to a Daughter *within ſix Years after Teſtator's Death*, with Intereſt till paid, for her Maintenance, and ſhe marries and dies within the ſix Years, the Money goes to her Adminiſtrator, and the Intereſt ceaſes at her Death. *Cowper* v. *Scot*, *H.* 1731. 3 *P. W.* 119.]

[If Land is charged with Portions, and no Time appointed for Payment, it is payable preſently, becomes an Intereſt veſted, and goes to the Executor. *Ibid.*]

[If one direct his Debts and Legacies to be paid out of his Perſonal Eſtate, and if that is not ſufficient, his Executor within twelve Months to ſell or mortgage his Real Eſtate for that Purpoſe, and gives 1000 *l.* to *A.* who dies within a Year, and Perſonal Eſtate is not ſufficient, the Legacy is veſted, and ſhall go to *A.*'s Executor. *Wilſon* v. *Spencer*, *H.* 1732. 3 *P. W.* 172.]

[If a Man deviſes 1000 *l.* to each of his Daughters to be raiſed and paid at the Death of his Wife out of his Real Eſtate, with Intereſt from her Death till paid to his Daughters, or their reſpective Executors, and if either of them die in his

* 2d Part of 2 *Mod. Ca.*

Lifetime, then the whole Sum to go to the Survivor, and not to ſink in the Eſtate for the Benefit of the Heir, and one Daughter dies before the Mother, her 1000*l.* ſhall be raiſed and paid to her Repreſentative. *Lowther* v. *Condon*, *H.* 1740, and *T.* 1741. 2 *Atkyns* 127.]

[If *A.* by his Will gives his Eſtate to Truſtees, and their Heirs to pay Debts and Legacies, and then to ſtand ſeized for the Uſe of *B.* and the Heirs of his Body, and for Default to ſuch Perſon, and for ſuch Eſtate as *A.* ſhall appoint, and for want of Appointment to his own right Heirs; and the Truſtees to pay ſuch Maintenance to *B.* during his Minority as *A.* ſhall appoint; and by Codicil directs that the Truſtees ſhall pay the Rents and Profits during *B.*'s Minority to *C.* who is to allow ſuch Maintenance to *B.* during his Minority as ſhe thinks fit, the Reſidue to her own Uſe, and by another Codicil directs the Truſtees not to convey to *B.* till Twenty-ſix, and till then he is to have ſuch Maintenance as *C.* and the Truſtees think fit; the Rents and Profits veſt in *B.* at Twenty-one, tho' the Time of receiving is prolonged to Twenty-ſix. *Smith* v. *Newport*, *T.* 1742. 2 *Atkyns* 344.]

[If a Sum is given to be divided between ſeveral Brothers and Siſters at Twenty-one, or Day of Marriage with Conſent, and if any die before Twenty-one, or marry without Conſent, their Shares to go to the others at Twenty-one, or Marriage with Conſent; and one dies after Twenty-one, and then two marry without Conſent, the Repreſentative of the Deceaſed is intitled to his Share of the two Forfeitures. *Chauncy* v. *Graydon*, *T.* 1743. 2 *Atkyns* 616.]

[If a Man gives Two-thirds of his Real Eſtate to his Son and his Heirs for ever, but in caſe he dies before Twenty-one *or* without Iſſue, then to his Wife, her Heirs and Aſſigns; it is a veſted Eſtate in the Son at Twenty-one, and ſhall go to his Heir at Law, tho' he die without Iſſue. *Walſh* v. *Peterſon*, *M.* 1744. 3 *Atkyns* 193.]

[If a Woman gives to her Daughter all her Perſonal Eſtate to be ſold, *&c.* as ſhe thinks fit, to pay Debts, and the Reſidue to be paid and divided between *A.* and *B.* her Grandchildren, at Twenty-one, or ſooner if the Daughter thinks fit, and makes her Executrix; as ſhe is only Truſtee for her Children, the Legacy veſts at Teſtatrix's Death, and if *B.* dies it is tranſmiſſible to *A.* *Steadman* v. *Palling*, *H.* 1746. 3 *Atkyns* 423.]

[If *A.* deviſes 1500*l.* to *B.* when he attains Twenty-five, and empowers his Executors to lay it out, and apply the Intereſt for *B.*'s Education, and Part of the Principal to put him Prentice, and the Remainder to be paid him at Twenty-five; this ſhall be conſtrued a veſted Legacy, and only Payment poſtponed. *Fonereau* v. *Fonereau*, *T.* 1748. 3 *Atkyns* 645. 1 *Vezey* 118.]

[If a Man deviſes 400*l.* to be put out on Security for *A.* that he may have the Intereſt for Life, and for the Heirs of his Body, and if he dies without Heirs, then over; the Whole veſts in *A.* and the Deviſe over is void, as too remote. *Butterfield* v *Butterfield*, *M.* 1748. 1 *Vezey* 133, 154.]

[If a Man gives his Son 400*l.* to be paid in a Year after his Death, and 100*l.* at the Death of his Mother, the 100*l.* is a veſted Legacy; for the Words *to be paid* muſt be applied to this alſo. *Jackſon* v. *Jackſon*, *H.* 1748. 1 *Vezey* 217.]

[If a Man after his Daughter's Marriage, when ſhe has only one Daughter *A.* deviſes his Perſonal Eſtate to *A.* and all Children his Daughter may have, equally, to be paid as ſoon as they are able to receive and diſcharge; it veſts in each Child as ſoon as it comes *in eſſe*, and is tranſmiſſible, tho' ſubject to be varied, and does not wait the veſting till the Death of Teſtator's Daughter. *Exel.* v. *Wallace*, *H.* 1750. 2 *Vezey* 117.]

[If *A.* by Codicil deſires his Siſter *B.* out of the Money given her by his Will, to *leave* 500*l.* at her Death to *C.* and *C.* ſurvives *A.* and dies before *B.*; *C.*'s Repreſentative ſhall have it paid by *B.*'s Repreſentative. *Medlicot* v. *Bowes*, *H.* 1748. 1 *Vezey* 207.]

[If a Man deviſes the Reſidue of his Perſonal Eſtate to *A.* his Grandſon at Twenty-one, and if he dies before to *B.* *A.* ſhall not have the Intereſt during his Minority, but it ſhall accumulate till he is Twenty-one. If *A.* ſhould die before, whether his Repreſentative or *B.* ſhould have it, *Dub.* *Butler* v. *Freeman*, *T.* 1743. 3 *Atkyns* 58.]

So,

So, if a Man deviſes Land to his Heir *charged with* 3000 *l. for the Portion of a Daughter at the Age of Twenty-one or Marriage, if ſhe marries with Conſent, otherwiſe* 1000 *l.* The Daughter dies before, the Portion ſinks for the Benefit of the Heir. *R.* 2 *Ver.* 417.

(3 Y. 9.) When a Legacy carries Intereſt.

If a Man deviſes 100 *l.* to an Infant to be paid at ſuch an Age, and does not make Proviſion for his Maintenance in the mean Time, he ſhall have Intereſt, and it does not accrue to the Benefit of the Executor. *Per Cur.* 31 *Car.* 2. 2 *Ven.* 346. *Vide Ante*, (3 R. 6.)

[If a veſted Legacy, payable at Twenty-one, be given by a Father to a Child who has no other Proviſion, it ſhall carry Intereſt, but not if given by a Grandfather. *Haughton* v. *Harriſon*, *T.* 1742. 2 *Atkyns* 329]

So, if it is to an Infant at his full Age. 2 *Vent.* 346. *R. upon Demurrer*, *Ca. Ch.* 60.

If a Man deviſes *that his Perſonal Eſtate ſhall be laid out for the Purchaſe of Land, but if his Wife is enſeint with a Daughter, that ſhe ſhall have* 3000 *l. at her Marriage, if ſhe marries with the Conſent of her Mother, otherwiſe* 1000 *l. only, and that the Mother ſhall have* 80 *l. Part of the Intereſt of the* 3000 *l. for the Education of the Daughter*; the Daughter ſhall have the whole Intereſt of the 3000 *l.* and not the 80 *l.* only. *R.* 31 *Car.* 2. 2 *Vent.* 346.

If a Man deviſes 400 *l. to a Woman to be laid out in a Purchaſe*; her Huſband ſhall have Intereſt for the 400 *l.* from the Time of exhibiting his Bill for it. *R.* 2 *Vent.* 356.

If a Man deviſes 100 *l.* to one of full Age without ſaying, *at what Time*, he ſhall have Intereſt from the Time of the Bill filed. *Sal.* 415.

If the Day of Payment is limited, he ſhall have Intereſt from that Day. *Sal.* 415. 1 *Ver.* 262.

[If *A.* gives 500 *l.* to his Grand-Daughter, to be paid at Twenty-one, or Marriage, and if ſhe dies before either, then gives it to another; ſhe is not intitled to Intereſt, nor to have the Principal ſecured. *Palmer* v. *Maſon*, *M.* 1737. 1 *Atkyns* 505.]

[If a Man by Will gives 1000 *l.* a-piece to five Brothers and Siſters, (not his Relations) to be paid at Twenty-one, if they attain that Age, *and not otherwiſe*, and if any die before, the reſpective Legacy to be void; and till they attain Twenty-one, or, if the Legacies beome void, impowers his Executors to lay out the Money for the Purpoſes of his Will; the Legacies bear no Intereſt, nor ſhall be particularly ſecured. The *Purpoſes* of the Will relate to the Reſiduary as well as other Legatees. *Heath* v. *Perry*, *T.* 1744. 3 *Atkyns* 101.

[If a Legacy is given generally at Twenty-one or Marriage, or even if given to *A.* payable at Twenty-one, and ſo veſted, yet it carries no Intereſt, unleſs in the Caſe of a Child who has no other Proviſion; for there the Court always gives Intereſt by way of Maintenance, *Ibid.*]

[If a Woman by Will gives her Daughter 100 *l. per Ann.* till ten Years, and then 50 *l.* more till Twenty-one, for Maintenance and Education, and gives her 8000 *l.* to be paid at Twenty-one, or if ſhe dies before Twenty-one without Iſſue living at her Death, then to *A.* this Legacy ſhall not carry Intereſt. *Hearle* v. *Greenbank*, *P.* 1749. 3 *Atkyns* 695. 1 *Vezey* 298.]

If Legacies are given in ſuch Proportion as the Executor ſhall appoint, and a Year is given him to make Diſtribution; the Executor ſhall pay Intereſt from the End of the Year, if he does not make Diſtribution; for the public Funds are ready to receive. *R.* 2 *Ver.* 745.

But a Man of full Age ſhall not have Intereſt for a Legacy, 'till his Bill is exhibited, if the Time of Payment is not mentioned by the Will. *Sal.* 415.

Nor an Infant, till a Year is expired after the Death of the Teſtator. *Sal.* 415. *Semb. Cont.* 5 *Geo.* 2. 13.

[When Legacies are deviſed out of a Real Eſtate, or there is other real ſufficient Fund to anſwer them, if no Time is appointed for Payment, they ſhall carry

Intereſt from the Time of Teſtator's Deceaſe, or at leaſt from a Year after. *Bilſon* v. *Saunders*, *M.* 1727. *Bunb.* 240.]

[If a Man gives his Niece a Legacy payable a Year after his Death, and afterwards her Huſband, apprehending it was not payable till her Marriage, receives Intereſt on it only from her Marriage, and the Legacy itſelf, and gives a Receipt in full, yet Equity will decree him Intereſt from a Year after Teſtator's Death. *Eaſt* v. *Thornbury*, *H.* 1731. 3 *P. W.* 126.]

[If there is a Proviſo in a Settlement, that if Huſband and Wife die, leaving Iſſue unprovided for, Truſtees may enter on an Eſtate and take the Rents till they have received 200 *l.* for the Benefit of ſuch unprovided Children, and in ſuch Manner as the Survivor of Huſband and Wife ſhall appoint, and the Wife ſurvives, and appoints the 200 *l.* to the only unprovided Child, Intereſt ſhall be allowed from the Death of the Mother, tho' the Eſtate is ſold to a Purchaſer. *Green* v. *Belcher*, *H.* 1737. 1 *Atkyns* 505.]

[If a Legacy is given to be divided among younger Children as the Mother pleaſes, it ſhall bear Intereſt from one Year after Teſtator's Death, and being veſted ſhall not accumulate, but go for their Maintenance till divided. *Coleman* v. *Seymour*, *H.* 1748. 1 *Vezey* 209.]

(3 Y. 10.) When conſtrued *cumulative*.

If a Man by his Will gives *to his Children, which he ſhall have at the Time of his Death*, 300 *l.* and afterwards having three Children, by Codicil gives 200 *l.* *to each of them to be paid at their reſpective Ages*; this Deviſe ſhall be conſtrued by way of Accumulation, ſo that each Child ſhall have 500 *l.* *R. Ca. Ch.* 301.

If a Man has three Nieces, and is indebted to one of them in 100 *l.* and deviſes to her 300 *l.* and to his other Nieces 200 *l.* each, and afterwards borrows another 100 *l.* of the firſt: She ſhall have the Legacy of 300 *l.* over and above her Debt: And no Part of a Legacy ſhall be applied to a Debt, but where the Intent appears by other Circumſtances that it ſhall. *R.* 1 *Sal.* 155. *Cont. per Trevor Maſter of the Rolls, but Harcourt Acc. Sal.* 508. *Acc.* 2 *Ver.* 593, 4.

So a Legacy leſs than a Debt ſhall not be intended to be in Lieu of the Debt. *Sal.* 508. 2 *Ver.* 259, 478, 505. 2 *P. W.* (617.)

[A Thing given in Satisfaction muſt be of the ſame Nature, and attended with the ſame Certainty, as that in Lieu of which it is given; ſo Land is no Satisfaction for Money, nor Money for Land, nor a Thing ſubject to a Contingency. *Bellaſis* v. *Uthwatt*, *H.* 1737. 1 *Atkyns* 426.]

[If *A.* gives *B.* a Bond for 300 *l.* and Intereſt, and three Years after pays 100 *l.* and all Intereſt, and five Years after by his Will deviſes Lands to Truſtees, to pay *B.* 200 *l.* in two Years after his Death, and *other Lands* to the ſame Truſtees to pay *B.* 200 *l.* in one Year after his Death; theſe Legacies are not a Satisfaction for the Bond, for they are payable at a future Time, the Bond immediately; and they are alſo Contingent. *Nicholls* v. *Judſon*, *P.* 1742. 2 *Atkyns* 300.]

[If a Man by Will gives 1000 *l.* each to two Siſters, and if either die before the Legacy paid, the Whole to the Survivor, and the Legacies to remain in his Executor's Hands till their reſpective Ages of Twenty-one; and afterwards gives a Bond to each for 4000 *l.* conditioned for Payment of 2000 *l.* provided ſhe marry in his Life with his Conſent, or that ſhe ſurvive him; they are intitled to the Legacies, and to the Bonds, for they are on Contingencies. *Spinks* v. *Robins*, *H.* 1742. 2 *Atkyns* 491.]

Or, given upon Condition; for, if the Condition is not performed, the Legacy will be loſt. *Sal.* 508. *Eq. R.* 89.

Or, where the Deviſe is of Land. *Sal.* 508. *R.* 2 *Ver.* 298. *Vide* 5 *Geo.* 2. 36. 2 *P. W.* (616.)

[If *A.* being indebted 260 *l.* by Bond to her Servant *B.* by her Will gives her 500 *l.* to be paid three Months after *A.*'s Death, and in another Part ſays, I give 5 *l.* a-piece to the Reſt of my Servants, but not to *B.* for I have done very well for her before; and by a latter Clauſe gives her Lands in Truſt to pay Debts and Legacies;

Legacies; the Legacy is not a Satisfaction for the Bond, but *B.* ſhall have both. *Richardſon* v. *Greeſe*, *H.* 1743. 3 *Atkyns* 65.]

If a Man indebted to *A.* deviſes to him a Sum equal to, or greater than, his Debt; it ſhall be taken to be in Satisfaction. *Eq. R.* 89.

Or, gives it by Settlement. *Ibid.*

Otherwiſe, if there was an open Account, and it was uncertain whether he was indebted to him or not. 1 *P. W.* 299.

Or, if the Debt was contracted after the Will. *Ibid.*

So where, before his Will, a Man declares that he will augment his Daughters Portions, and docks the Entail with ſuch Intent; they ſhall have their Portions, and alſo the Addition by the Will. *R.* 1 *Ch. R.* 200.

[If Huſband by Will gives Annuity to his Wife, by Codicil 600 *l.* more, and an Hour before his Death orders his Servant to deliver to his Wife there preſent two Bank Notes, payable to Bearer, for 300 *l.* each, and a Note, not payable to Bearer, for 100 *l.* ſaying he had not done enough for her; this Gift of the two 300 *l.* is a *Donatio Cauſa Mortis*, and is not a Payment of the Legacy. *Miller* v. *Miller*, *T.* 1735. 3 *P. W.* 356.]

[A Legacy of 1000 *l* to a Wife ſhall not be conſtrued as a Satisfaction for a Deficiency in her Jointure, but as a Bounty to her. *Probert* v. *Morgan*, *P.* 1739. 1 *Atkyns* 440.]

[So if *A.* on Marriage ſettles 300 *l.* long Annuities, in Truſt for himſelf for Life, to his Wife for Life, to his Children as he ſhall appoint, and, if none, to his Executors, *&c.* and has one Child, and by his Will deviſes all his Real and Perſonal to his Wife and her Heirs, charged with 10,000 *l.* to his Daughter, payable at Eighteen; ſhe is intitled to the long Annuities, and to the 10,000 *l.* out of the Perſonal and Real Eſtate. *Bellaſis* v. *Uthwatt*, *H.* 1737. 1 *Atkyns* 426.]

[If a Freeman of *London* directs his Teſtamentary Third to pay Debts, and the *Reſidue* to be divided among his Wife and Children, and then marries one of his Daughters, and gives her 1000 *l.* which in the Marriage Articles is called her Portion or Proviſion, and dies, the Daughter nevertheleſs ſhall have her ſeventh Part of the Reſidue, for a ſubſequent Portion, tho' an Ademption of a liquidated Legacy, is not ſo of a Reſidue. *Farnham* v. *Philips*, *M.* 1741. 2 *Atkyns* 215.]

[If a Man by Will directs his Executors to place out 1000 *l.* at Intereſt, to apply what they think neceſſary for the Maintenance of his Grandſon *A.* and that they might apply all or any of it in putting him Apprentice, or ſetting him up, and what is not ſo applied to be paid him at Twenty-one, and if he dies before, to *B. C.* and *D.* Teſtator's Children, and afterwards Teſtator puts *A.* Apprentice, and gives 120 *l.* with him, then makes a Codicil, and dies; *A.* ſhall have the whole 1000 *l.* *Roome* v. *Roome*, *H.* 1744. 3 *Atkyns* 181.]

So, where by his Will a Proviſion is made of 1000 *l.* a-piece for every Child after born; and a Son being born, he afterwards gives to him 4000 *l.* whereby, he ſays, he will have 5000 *l.* *R. Ch. R.* 267.

If a Son deviſes to his Siſters a greater Sum than was ſecured by the Settlement of his Father, and then deviſes the Eſtate to his Heir Male; it ſhall not be in Lieu of the Portions by the Settlement. *R.* 2 *Ver.* 260. *in Parl. tho' it was decreed Cont. in Chancery.* 2 *Ver.* 177.

[If *A.* gives 2000 *l.* in Truſt, to pay the Intereſt to his Wife for Life, then the Benefit of the Principal to his Son, but if he dies before Twenty-one, then gives it over to his Daughters, the Son attains Twenty-one, the 2000 *l.* with the Reſt of the Eſtate, continues always in the Stock in Trade; the Son makes his Will, without any Reference to the Father's, and gives the Intereſt of 10,000 *l.* to his Mother for Life, and then the Principal to his Siſter *S.*'s Children, charges it on his Real and Perſonal Eſtate, to be paid a Month after his Death; this Intereſt of the 10,000 *l.* is not in Satisfaction of the Intereſt of the 2000 *l.* *Clark* v. *Sewell*, *T.* 1744. 3 *Atkyns* 96.]

[If a Father leaves a Legacy generally, and afterwards gives a Portion, whether greater or ſmaller than the Legacy, it is an Ademption of it; ſo if a collateral Relation to an Orphan under his Care; but if a Collateral gives a Legacy to one whoſe Father is living, and afterwards advances him, it is not an Ademption. *Sbudal* v. *Jekyll*, *H.* 1742. 2 *Atkyns* 516.]

[Or if a Father (and *à Fortiori* a Collateral) gives a Legacy, and afterwards gives a Portion, declaring at the ſame Time that he intends to leave ſomething, but will not be bound, it is not an Ademption. *Ibid.*]

If a Bond is given to ſettle 100*l.* *per Annum*, or to pay 2000*l.* a Deviſe of 80*l.* *per Ann.* ſhall not be a Satisfaction *pro tanto*, if there are Aſſets to pay all Debts. *R.* 2 *P. W.* (617.)

[If a Man is a general Debtor for two Annuities, one of 10*l.* and another of 6*l.* and by Will gives another of 10*l.* it ſhall not be a Satisfaction for either, but ſhall accumulate. *Graham* v. *Graham*, *T.* 1749. 1 *Vezey* 262.]

[But if he grants one on a Condition, and ſecured by Deed, out of a particular Eſtate, and the other by Bond only, the Annuity by Will ſhall be a Satisfaction for the latter. *Ibid.*]

[If a Man in his Will gives an Annuity to *A.* and alſo recites the Amount of a Debt due from him to *A.* and orders it to be paid, *A.* may claim the Legacy, and yet not abide by the Teſtator's Calculation of the Debt due to him; for his Intention was, that the full Debt ſhould be paid. *Clarke* v. *Guiſe*, *T.* 1755. 2 *Vezey* 617.]

(3 Y. 11.) When not.

But if a Man by Marriage-Settlement, *&c.* has provided Portions for his Children, and afterwards by his Will gives to each of them the ſame Sum, which was ſecured by the Settlement; yet the Portions ſhall not be doubled, if his Intent that they ſhould be ſo is not apparent. *R.* 2 *Vent.* 348. 2 *Ver.* 111, 257, 439.

So, if a Man *by Settlement directs* 3000l. *to be paid to a Daughter of his ſecond Marriage, if he has only one Daughter*; and afterwards by Will *deviſes all his Lands, for the raiſing* 9000l. *for his three Daughters*, (having two by his former Marriage;) the Daughter of the ſecond Marriage ſhall have only 3000*l.* to be paid according to the Intent of the Settlement. *R.* 31 *Car.* 2. *Per Finch*, 2 *Vent.* 347.

So, if a Man charges 500*l.* upon his Land for *A.* and afterwards gives 500*l.* to *A.* by his Will; *A.* ſhall not have a double Portion. 1 *Ch. R.* 77. 2 *Ver.* 257.

If a Man by his Will gives 1000*l.* *to each Daughter*, and afterwards gives *to one of them upon her Marriage in his Life-time* 1000l. ſhe ſhall not have the other 1000*l.* by his Deviſe. 2 *Ver.* 257, 115.

[If a Father makes his Will, and gives his Daughter who is married 50*l.* to be lent out for her, and ſhe to have the Uſe of it, and the Huſband afterwards receives it of the Father, and gives a Receipt for it, in Lieu of her Portion, and of the Legacy; this ſhall be a Satisfaction of the Legacy. *Scotton* v. *Scotton*, *M.* 6 *G. in Canc. Str.* 235.]

[If *A.* deviſes 300*l.* to his Daughter, if ſhe marries with her Mother's Conſent, otherwiſe only 200*l.*; afterwards in his Life ſhe marries, and the Father gives 200*l.* with her; this is a Revocation of the Deviſe ſo as to deprive her of the other 100*l.* *Anon.* *M.* 7 *G. Str.* 407.]

[If a Father having ſix Children, gives *A. B. C. D.* 1500*l.* each in his Life-time, and by Will reciting this as to *A. B.* and *C.* (omitting *D.*) gives 1500*l.* each to *D. E. F.* and the Reſidue to be divided amongſt them; the Money *D* had received ſhall go in Satisfaction of the Legacy. *Upton* v. *Prince*, 8 *G. 2. C. T. T.* 71.]

[If Huſband before Marriage, in Conſideration of conſiderable Fortune, ſettles 100*l.* *per Annum* in Truſt for Pin-money, two Years whereof are in Arrear; he makes his Will leaving her 500*l.* another Year becomes in Arrear, and he dies; the Legacy ſhall be deemed in Satisfaction of the Arrears incurred before making the Will, but not after. *Fowler* v. *Fowler*, *P.* 1735. 3 *P. W.* 353.]

If he limits a Term *for raiſing* 3000l. *Portions for each of his Daughters, after his Death without Iſſue Male*, and afterwards in his Life-time, having Iſſue Male, *raiſes* 1800l. *for the Portions of his Daughters*, and then his Son dies; this

this 1800*l.* goes in Part of the 3000*l.* to be raiſed by the Term, tho' it was intended for Portions at the Time when he had a Son. *R.* 2 *Ver.* 257.

So, if by Settlement he ſecures 5000l. *for Daughters Portions at Eighteen or Marriage*, and afterwards by a ſubſequent Settlement of other Lands creates a Term *for raiſing* 5000l. *at Sixteen or Marriage*; it ſhall be only one 5000*l.* *R.* 2 *Ver.* 348.

If *A.* by a Note agrees to pay 7*l.* 10*s.* *per Ann.* to his Wife for Life, who had joined in the Sale of Part of her Jointure, and afterwards, on her joining in the Sale of another Part, he gives another Note for 6*l.* 10*s.* *per Ann.* for her Life, and afterwards deviſes 14*l.* *per Ann.* to his Wife for Life; it ſhall be intended in Lieu of the Notes. *R.* 2 *Ver.* 498.

So, if *A.* by Articles agrees, *to give* 800l. *to his Wife, and that ſhe ſhall not be barred thereby of any Gift by his Will*; and by Will deviſes to his Wife 1000*l.* ſhe ſhall have only ſo much as exceeds the 800*l.* *R.* 2 *Ver.* 555.

So, if he articles to give a Third of his Perſonal Eſtate, and by his Will gives to the ſame Perſon 7000*l.* he ſhall have only the one, or the other. *R.* 2 *Ver.* 556.

If he deviſes 50*l.* to *A.* and afterwards gives a Note to her Huſband in Lieu of it. 2 *Ver.* 646.

So, if *A.* agrees to give a Marriage-Portion to *B.* to be ſettled, *&c.* and before Payment gives to the Children of *B.* Legacies to the Value; it ſhall be taken to be in Satisfaction. *R. Eq. R.* 64.

So, if he covenants to ſettle 100*l.* *per Ann.* upon his Son, and permits 100*l.* *per Ann.* to deſcend to him. 1 *P. W.* 325. 2 *Ver.* 558.

Or, covenants to leave 500*l.* to his Wife; and her Share of his Perſonal Eſtate amounts to ſo much. 1 *P. W.* 324.

If *A.* has a Legacy of 500*l.* given her by her Grandfather, and afterwards, her Father upon her Marriage gives for her Portion 1500*l.* without Mention of, or Receipt for, the Legacy; Twenty-one Years afterwards, ſhe and her ſecond Huſband demand the Legacy; it ſhall be intended to be ſatisfied by the Portion. *R.* 2 *Ver.* 484, 5.

Otherwiſe, if the Portion was alſo deviſed by the Father. *Eq. R.* 72.

[If *A.* ſeized of Freehold, and poſſeſſed of Leaſehold and Perſonal, gives an Annuity of 20*l.* to his Daughter *H.* and the Heirs of her Body, and if ſhe dies without Iſſue to his two Sons *B.* and *C.* whom he makes Executors; *C.* dies Inteſtate leaving Children, and *B.* by Will gives an Annuity of 20*l.* to his Siſter *H.* and her Daughter out of his Freehold Houſes, and if they die without Iſſue, to his Nephew; and by a Codicil wrote with a Pencil, and not executed according to the Statute of Frauds, ſays, it is not to be conſidered as another Annuity, but only to confirm the Annuity left by the Father, *H.* ſhall not have both Annuities. *Heather* v. *Rider*, *P.* 1758. 1 *Atkyns* 425.]

[If *A.* on his Daughter's Marriage gives Bond to leave 5000*l.* among her younger Children, and by Will creates a Term in a Real Eſtate, to apply the Rents to the Maintenance of the Children till of Age, and gives his Perſonal Eſtate in Truſt to pay the Produce to his Daughter for Life, and then to pay 1500*l.* to one Child, and the 3500*l.* among the others as ſhe ſhould appoint, and declares the Legacies in Satisfaction of the Bond, they muſt make their Election under the Will or under the Bond, and if under the Bond, can have nothing under the Will, tho' the Truſt of the Term is of a Real Eſtate, and the Bond a Perſonal Debt; becauſe the Deviſe is declared to be in Satisfaction, otherwiſe not. *Graves* v. *Boyle*, *T.* 1739. 1 *Atkyns* 509.]

[If a Man aſſigns his Perſonal Eſtate to *A.* his natural Daughter, but keeps the Deed and manages his Perſonal Eſtate as before, then gives her a Bond for 10,000*l.* then makes his Will, and gives her his Real Eſtate if ſhe marries *B.* if not, to *B.* and makes her Executrix and Deviſee of his Perſonal Eſtate, ſhe ſhall not have all, but make her Election. *Johnſon* v. *Smith*, *M.* 1749. 1 *Vezey* 314.]

[If a Man agrees to ſettle 100*l.* *per Annum* on his intended Wife, and finding himſelf ill, leaves her 100*l.* *per Annum* by Will; recovers, marries, and the Settlement is carried into Execution, ſhe ſhall have but one 100*l.*; not that one is a Sa-

tisfaction for the other, but it is a Completion of the Act, and the Settlement a Corroboration of the Will. *Maſcal* v. *Maſcal*, *M.* 1749. 1 *Vezey* 323.]

(3 Y. 12) When a Legacy ſhall be controuled by a ſubſequent Clauſe or Proviſion, and when not.

[A Deviſe in expreſs Words ſhall not be extended by ſubſequent general ones, further than the natural Meaning of the preceding ones. *Roberts* v. *Kuffin*, *M.* 1740. 2 *Atkyns* 112.]

[If *A.* by his Will gives to *B.* all his Dividends on his *South-Sea* Annuities, and then by Codicil gives to *C.* 20*l.* *per annum* for Life, to be paid out of his *South-Sea* Annuities, it is not a Revocation *in toto*, but both ſhall ſtand. *Stone* v. *Evans*, *M.* 1740. 2 *Atkyns* 86.]

If a Man deviſes *a Moiety of his Perſonal Eſtate to his Wife, and then gives ſeveral Legacies and the Reſidue to another*; the Wife ſhall have one full Moiety, and all the Legacies ſhall be paid out of the other Moiety, if it is ſufficient. *R. Ca. Ch.* 16. *Dub. Dy.* 59. *b.*

[If a Man deviſes 100*l.* *per Annum* to his Son and his Wife for their reſpectives Lives, 60*l.* of which ſhould be paid to the Wife for the Support of herſelf and Daughter, and 40*l.* to the Son, and the Son dies in Teſtator's Life, the Whole 100*l.* ſhall be paid to the Wife. *Cowper* v. *Scot*, *H.* 1731. 3 *P. W.* 119.]

[If *A.* by Will gives 1000*l.* for the Benefit of his Daughter for Life, then to ſuch Children as ſhe ſhould leave at her Death, and her Huſband by Will, to make good *A.*'s Will, gives his Wife 1000*l.* and after her Death equally to his two Sons *B.* and *C.* his Daughter *D.* having releaſed her Right; *C.* ſurviving his Mother, ſhall have the Whole 1000*l.* *Eaſt* v. *Cook*, *M.* 1750.] 2 *Vezey* 30.

If a Man gives 500*l.* to his Daughter *to be paid in ſix Months after his Death*, and then adds a Clauſe, *that if his Daughter dies before Age, or Marriage, the Portion, if by Law it can, ſhall go to his Son:* If the Portion is paid in ſix Months, and the Daughter afterwards dies under Age, it ſhall not be refunded; for both Clauſes ought to be conſiſtent, which cannot be, unleſs ſhe dies under Age within the ſix Months. *R. Ch. R.* 27.

If a Man gives Legacies *to his Children* in eſſe, *and alſo to the Child whereof his Wife was privement enſeint, and if all his Children die, that his Eſtate ſhall go to the Children of his Brother:* If all the Children *in eſſe* die, but a Daughter born after his Death ſurvives, the Eſtate does not go to the Children of the Brother. 1 *Ch. R.* 77.

But if *A.* deviſes Portions to Grandchildren, *to be paid at Age or Marriage*, and afterwards directs, *that all his Legacies ſhall be paid within ſix Months after his Death*; it extends to the other Legacies only. *R. Eq. Ca.* 154*.

*2d Part of 2 *Mod. Ca.*

(3 Y. 13.) When a Legacy ſhall be lapſed.

If a Man deviſe Money to *A.* who dies before the Teſtator; the Legacy is lapſed, and merges in the Perſonal Eſtate. *Vide Deviſe*, *ante* (3 A. 3, *&c.*)

Vide Executor, *Ante*, (3 G. 7.)

[If a Man deviſes to ſix Executors all his Eſtate, to pay, *&c.* and the *Remainder* to be equally divided between them, and one of the ſix dies before the Teſtator, his Share is a lapſed Legacy, undiſpoſed of, and goes to the next of Kin. *Page* v. *Page*, *M.* 2 *G.* 2. *Str.* 820.]

[If a Man makes his Wife Executrix, and deviſes the Uſe of his Perſonal Eſtate to her for Life, and after her Death to his four Brothers, Share and Share alike, and two of them die before him, the Shares of the two ſo dead belong to the Executrix, and not to the others as next of Kin. *Man* v. *Man*, *P.* 4 *G.* 2. *Str.* 905.]

[If a Man deviſes 200*l.* a-piece to his Children, payable at Twenty-one, and if any of them die before Twenty-one, then his Legacy to go to the ſurviving Children; and one of them dies in the Life of the Teſtator; the Legacy lapſes as to the Perſon dying, but is well given over to the Survivors. *Willing* v. *Baine*, *T.* 1731. 3 *P. W.* 113.]

[If *A.* deviſes to *B.* his Heirs, Executors, *&c.* all her Houſe and Furniture, and all her Real and Perſonal Eſtate, to the Intent, that out of her Real and Perſonal Eſtates her Legatees may be paid, and gives to *C.* 2000*l.* in Truſt for the Uſe of his Daughter *D.* to be paid her at Eighteen, or Marriage, and till then to be laid out at Intereſt, and the Intereſt to be put out at Intereſt, and directs the 2000*l.* to be paid to *C.* eighteen Months after Teſtatrix's Death; *C.* dies in Teſtatrix's Life, and *D.* ſix Months after unmarried, the Legacy is lapſed, tho' there are perſonal Aſſets ſufficient. *Van* v. *Clark*, *T.* 1739. 1 *Atkyns* 510.]

So, if he deviſe to *A. upon Condition that* A. *ſhall give ſo much to the Children of* B. if *A.* dies before the Teſtator, the Whole is lapſed and the Children of *B.* take nothing. *R.* 2 *Ver.* 116, 208. *Semb, Cont.* 2 *Ver.* 522.

[If *A.* deviſes the Reſidue to his Executrix, or her Heirs, *&c.* and ſhe dies in his Life-time, he dies Inteſtate as to the Reſidue. *Stone* v. *Evans*, *M.* 1740. 2 *Atkyns* 86.]

[If *A.* deviſes the Surplus of his Perſonal Eſtate to *B.* and his Heirs, and in Default of Iſſue at his Death, to be equally divided between his Siſters and their Heirs; and *B.* dies in *A.*'s Lifetime, leaving a Son, as the Contingency has not happened, the Surplus does not go to the Siſters, but as an undiſpoſed Part, according to the Statute of Diſtributions. *Miller* v. *Faure*, *H.* 1747. 1 *Vezey* 85.]

If Teſtator deſires the Reſidue may be divided between *A.* and *B.* and *A.* dies in Teſtator's Lifetime, his Moiety does not ſurvive to *B.* but is undiſpoſed of, and ſhall go to the next of Kin. *Peet* v. *Chapman*, *T.* 1750. 1 *Vezey* 542.]

[If a Man by Will diſpoſes of all his Eſtate, gives Legacies, and then the Remainder in Fifths, and appoints *A.* his Heir to whatever is unappropriated, and one of the five reſiduary Legatees is dead, at making the Will, his Share goes to *A.* *Jackſon* v. *Kelly*, *T.* 1751. 2 *Vezey* 285.]

[If a Woman has a Power to appoint 4000*l.* to her Kin, and for Default to go according to the Statute, and by Will appoints to her Nephew *A.* he paying an Annuity to his Mother, and *A.* dies in Teſtatrix's Life, the 4000*l.* lapſes, but the Annuity remains a Charge on it. *Oak* v. *Heath*, *M.* 1748. 1 *Vezey* 135.]

If he deviſes to *A.* a Debt owing to him by *A.* who dies before the Teſtator, the Debt ſhall not be diſcharged. *R.* 2 *Ver.* 522.

Though he afterwards requires his Executor after his Death to give a Releaſe for the Debt; for this Clauſe is ancillary to the former. *R.* 2 *Ver.* 522.

(3 Y. 14.) When not.

But if 100*l.* is deviſed to *A. at his Age of Twenty-one, and if he dies before, that it ſhall go to* B. if *A.* dies in the Lifetime of the Teſtator, the 100*l.* ſhall go to *B.* 2 *Ver.* 208, 378. *Per King Ch.* 5 *G.* 2. 12, 13.

[If *A.* gives Four-eighths of his Perſonal Eſtate to his Niece *B.* and the Children born of her Body, and *B.* has then no Child, but afterwards has *C.* and dies before Teſtator, it is not a lapſed Legacy, for *B.* did not take an Eſtate-tail, (Children being Words of Purchaſe, not Limitation) but as Joint-tenant with *C.* who, on her Death, takes the Whole by Survivorſhip. *Buffar* v. *Bradford*, *M.* 1741. 2 *Atkyns* 220.]

[If *A.* gives 500*l.* to his Grandſon *B.* if he lives to Twenty-one, if not, then to the other Child or Children of *C.* equally, arriving at ſuch Age, and dies, and *B.* dies before Twenty-one, and *C.* had no other Children at *A.*'s Death, but has two afterwards, theſe two are intitled to it at Twenty-one. *Haughton* v. *Harriſon*, *T.* 1742. 2 *Atkyns* 329.]

So, if a Man deviſes 100*l.* to *A. at the Age of Twenty-one*, 100l. *to* B. *at the ſame Age, and* 100l. *to* C. *at the ſaid Age; and if any of them die before ſuch Age, that his Legacy ſhall be divided between the Survivors; and if two die before, the Whole ſhall go to the Survivor:* If any one dies before the Teſtator, his Legacy ſhall be divided between the Survivors. *R.* 2 *Ver.* 207.

If

If one deviſes to *A.* 400*l.* *which* A. *owes to him, provided that he pays out of it ſo much to his Wife, and ſo much to his Children*; it will be a good Deviſe to the Wife and Children, tho' *A.* dies in the Lifetime of the Teſtator. *R.* 2 *Ver.* 522.

So, if a Man by his Will diſcharges, releaſes, or forgives a Debt due from *A.* it will be a Diſcharge, tho' *A.* dies before the Teſtator. *R.* 2 *Ver.* 522.

[If Teſtator ſays, "I forgive my Son-in-law *A.* a Debt of 500*l.* due on "Bond, and deſire my Executor to deliver up the Bond to be cancelled," and *A.* dies in Teſtator's Lifetime, yet the Bond ſhall be cancelled. *Sibthorpe* v. *Moxom, M.* 1747. 3 *Atkyns* 580. 1 *Vezey* 49.]

[If *A.* by Will forgives her Son-in-law a Debt on Bond, and orders it to be delivered up (not ſaying *to whom*) to be cancelled, and he dies in *A.*'s Life, yet the Bond ſhall be cancelled, for this ſhall be conſidered as a Proviſion for her Family. *Sibthorpe* v. *Moxholme, M.* 21 *G.* 2. 1 *Wilſ.* 178.]

[If a Man deviſes his Real Eſtate to *A.* for Life, then to *B.* he paying 100 *l.* to *C.* in twelve Months after *A.*'s Death, and *C.* ſurvives *A.* but one Month, the Legacy does not lapſe, but goes to the Repreſentative of *C.* *Hodgſon* v. *Rawſon, M.* 1747. 1 *Vezey* 44.]

So in all Caſes, where the Legacy is not veſted by the Words of the Will, it ſhall not lapſe: As, if *A. gives to the four Children of* B. 1200*l.* *at the Diſcretion and Allotment of his Executor*, and one Child dies before *A.* his Share ſhall not lapſe; for the Executor had not made any Allotment. *R.* 2 *Ver.* 744.

So, if the Executor has Power by the Will *within a Year to make Diſtribution or Allotment*, and one Child dies within ſix Months before a Diſtribution; his Share does not go to his Executor or Adminiſtrator, for it was not veſted. *R.* 2 *Ver.* 745.

So, if a Man deviſes 200*l.* *a-piece to his two Children, and that if one dies, his Share ſhall go to the Survivor*; if one dies, his Legacy does not lapſe, but ſurvives. *R. Eq. Ca.* 137.

[If *A.* give his Grandaughter 800*l.* to be paid at Twenty-one, or Marriage, charged on a mixed Fund of Real and Perſonal, and ſhe dies unmarried before Twenty-one, it ſhall be paid out of the Perſonal. *Baſſet* v. *Baſſet, M.* 1744. 3 *Atkyns* 203.]

[If a Man by Will ſays, "I give the following Legacies, and if any die "before they are payable, I will that they ſhall not be deemed lapſed Legacies," and then gives to *A.* the Wife of *B.* her Executors, *&c.* 50*l.* and *A.* dies in the Life of Teſtator, the Legacy ſhall go to *B.* *Sibley* v. *Cooke, M.* 1747. 3 *Atkyns* 572.]

[But the Teſtator muſt nominate another Legatee, or it would not exclude the Heir at Law, or next of Kin. *Ibid.*]

(3 Y. 15.) When it merges in the Land.

If Portions are charged upon Land by Settlement, or by Deviſe, to be paid to a Son or Daughter at ſuch an Age, and the Son or Daughter dies before ſuch Age, the Portion or Legacy merges for the Benefit of the Heir. 2 *P. W.* (610), 277. *Vide Ante*, (3 Y. 2, 8.)

So, if a Legacy is charged upon Land, it merges for the Benefit of the Deviſee; for he is *Hæres factus*. *Vide* 2 *P. W.* (610), 277. *Vide Ante*, (3 Y. 2.)

[If *A.* Tenant for Life, and *B.* his eldeſt Son Tenant in Tail, reſettle Eſtate to *A.* for Life, to Truſtees for Years, to raiſe 1100*l.* to be paid to *C.* (*A.*'s ſecond Son) ſix Years after *A.*'s Death, with Intereſt at 5*l. per Cent.* for his Maintenance from *A.*'s Death, Remainder to *B. &c. C.* dies in Debt, two Years after him *A.* dies, and a good Eſtate comes to *B.* yet the Creditors cannot have the 1100*l.* the Contingency on which it was payable never happening; but it ſinks for the Benefit of the Owner of the Real Eſtate. *Bradley* v. *Powell, P.* 9 *G.* 2. *C. T. T.* 193.]

[If *A.* deviſes to Truſtees all his Lands in Truſt, to ſell Lands in *M.* to pay his Debts, and as to the Reſt of the Lands, to ſtand ſeized in Truſt to receive the Rents

Rents and Profits, and make Leaſes for 99 Years, determinable on three Lives, and therewith pay all his Debts and Legacies, and then ſtand ſeized to the Uſe of *B.* for Life, Remainder to her Iſſue, and gives a Legacy of 500 *l.* to *T.* to be paid at Twenty-one, or Marriage, and *T.* dies unmarried before Twenty-one, and Teſtator's Perſonal Eſtate and Lands in *M.* are not ſufficient to pay Debts; as the 500 *l.* is charged on Real as well as Perſonal Eſtate, it cannot be raiſed, Legatee having died before the Time of Payment. *Prowſe* v. *Abington*, *P.* 1738. 1 *Atkyns* 482.

[If 8000 *l.* is given to Truſtees, to lay out in Lands to be ſettled to the Uſe of *A.* and the Heirs of his Body, and for Default to be conveyed to *B.* on Truſt, in three Months, by Mortgage or Sale, to raiſe and pay 2000 *l.* to *C.* which is bequeathed to him in caſe *A.* dies without Iſſue, and by Codicil the 6000 *l.* given to *B.* is reduced to 5000 *l.* and *C.* dies, then *A.* dies under Twenty-one, and without Iſſue; the 2000 *l.* ſhall ſink in Favour of the Heir at Law. *Attorney-General* v. *Milner*, *T.* 1744. 3 *Atkyns* 112.

So, if it is charged upon Land and Perſonal Eſtate, and the Legatee dies before it is payable; his Executor or Adminiſtrator may reſort to the Perſonal Eſtate, but not to the Land. 2 *P. W.* (611.)

Tho' the Legatee be a Child, or a Stranger. 2 *P. W.* (613.)

[If *A.* deviſes 1500 *l.* to his Son, payable at his Age of Twenty-four, and deviſes his Real Eſtate to Truſtees, to raiſe ſufficient to diſcharge his Debts and Legacies, if his Perſonal Eſtate ſhould fall ſhort, the Death of the Son before Twenty-four ſhall not extinguiſh it; for it is an abſolute Legacy out of the Perſonal Eſtate, and the Real Eſtate is only in Aid of the Perſonal. *Harriſon* v. *Buckle*, *M.* 6 *G. Str.* 238.]

[If a Man deviſes to *M.* his Daughter 2500 *l.* at Age, or Marriage, and if *C.* his Son die without Iſſue-male, then *M.* to have at Twenty-one, or Marriage, 3500 *l.* more, and if the Son's ſo dying do not happen before *M.*'s Age or Marriage, then ſhe is to receive it whenever after it may happen; then deviſes his Real Eſtate to *C.* his Son in Tail-male, Remainder to his Brother in Fee, and declares the Land deviſed liable to that Payment whenever it becomes due, and directs, that on Failure of Iſſue of *C.*, *M. her Heirs or Aſſigns*, ſhall join in a Surrender of ſome Copyhold to the Uſe of his Brother, or the 3500 *l.* Legacy to be void. *M.* attains Twenty-one, marries, dies in *C.*'s Lifetime, her Huſband adminiſters, and then *C.* dies without Iſſue; the 3500 *l.* ſhall not ſink in the Land, but be raiſed for Adminiſtrator if Perſonal Eſtate deficient. *King* v. *Withers*, *T.* 9 *G.* 2. *C. T. T.* 117. affirmed by the Lords, with Coſts, 16th *March* 1735. 3 *P W.* 414.]

[If *A.* deviſe Lands to *T.* his ſecond Son, on Condition that he or his Heirs pay his ſix Grandchildren, *T.*'s Children, 90 *l.* in Default of Payment a Clauſe of Entry and Diſtreſs, and *T.* dies in *A.*'s Life, whoſe Heir at Law enters on them, and ſells them; yet the 90 *l.* is a continuing Charge on the Lands in the Hands of the Purchaſer, and the Children ſhall have it with Intereſt. *Wigg* v. *Wigg*, *T.* 1739. 1 *Atkyns* 382.]

[If a Man deviſes Copyhold Lands (ſurrendered to the Uſe, *&c.*) to his Wife for Life, then to his Son till his Grandſon attain Twenty-three; then to his Grandſon, his Heirs and Aſſigns, on Condition that he or they pay his Granddaughter *E.* 60 *l.* in two Years after he attains Twenty-three; if he dies without Iſſue, then to his (Teſtator's) Son, on Condition of paying 100 *l.* to *E.* in one Year after he enjoys under this laſt Deviſe, and if Grandſon or Son make Default in Payment, then a Power to *E.* his Executors and Adminiſtrators, to enter and receive till paid; *E.* marries aud dies after the Grandſon has attained Twenty-three, but in leſs than two Years after it; the 60 *l.* ſhall be raiſed, and paid to her Repreſentative. *Emes* v. *Hancock*, *H.* 1742. 2 *Atkyns* 507.]

[If a Man gives to each of his Daughters *A.* and *B.* 300 *l.* to be paid by his Son and Executor *C.* when he attains Twenty-ſix; but as they are otherwiſe provided for, directs they ſhall not have Intereſt till then; and for the better ſecuring the ſaid two Sums, charges them on Land, with Power to enter and hold till Payment; the Perſonal Eſtate is inſufficient, and *C.* dies before he attains Twenty-ſix; but as the Legacies are veſted, and the Time of Payment is poſtponed, for the Conveniency of the Eſtate, not on the Circumſtances attending the Legatees, they ſhall not ſink in the Land, but be paid. *Sherman* v. *Collins*, *H.* 1745. 3 *Atkyns* 319.

(3 Y. 16.) When it ſhall have Relation to the Time of making the Will.

In the Expoſition or Collection of the Intent of a Teſtator, Regard ſhall be had to the Time of making the Will; and therefore if he deviſes 10l. *to the Pariſh where he lives*, and afterwards he removes his Habitation to another Pariſh; the Pariſh where he lived at the Time of the Will, ſhall have the Legacy.

If he deviſes 400l. *to finiſh a Building*, and before his Death expends more than that Sum upon it; tho' the Building be not finiſhed, the Heir ſhall not have the 400*l*. *R.* 1 *Ver.* 96.

If he deviſes to *all his Children and Grandchildren*, without any Reference to his Death or Time future; it ſhall have Effect only as to thoſe *in eſſe* at the Time of his Will. *R. Eq. Ca.* 136.

If he deviſes *all Arrears now due* from the Dean and Chapter of *York*; Rent which afterwards becomes due does not paſs. *R. Eq. Abr.* 201.

All my Corn, Sheep, &c. now on my Ground. *P. W.* 598.

[If a Man makes a Deviſe to charitable Uſes before a Statute of Mortmain, but does not die till after it, yet the Deviſe is good in Law. R. By all the Judges. *Aſhburnham* v. *Bradſhaw*, *P.* 1740. 2 *Atkyns* 36.

(3. Y. 17.) Or, to the Death of the Teſtator.

Vide Deviſe, (N. 21)

But where a Deviſe is made in Words, General or Univerſal, the Reference ſhall be to the Death of the Teſtator; as, if a Man deviſes 20*l*. a-piece *to all the Children of* B. Iſſue, born after the making of the Will, before the Death of the Teſtator, ſhall take. *R.* 2 *Ver.* 105.

If a Man deviſes *all his Perſonal Eſtate to* A. he ſhall have all that the Teſtator had at the Time of his Death, tho' increaſed ſince the making of the Will. 2 *Ver.* 137, 688.

So, if the Teſtator releaſes to *A.* by his Will, *all Debts and Demands*; this extends to Debts at the Time of his Death, tho' contracted ſince the making of the Will. *Dub.* 2 *Ver.* 136, 7.

So, if he gives *all his Houſhold Goods*, and afterwards has more. *P. W.* 424, 5.

If he gives *all his Books*, and afterwards buys more. *P. W.* 597.

So, if the Deviſe is of ſuch a Sum *to his Children living at his Death*, and of ſuch a Sum *to the Children of* D. all the Children of *D.* ſhall take, tho' none born at the Time of making of the Will, or Death of the Teſtator. 2 *Ver.* 705.

So a Variation of Circumſtances, after a Will made, and before the Death of the Teſtator, does not deſtroy a Legacy; as, if a Man deviſes a Legacy *out of Money at Intereſt*, or *owing by ſuch a one*, *&c.* if the Money is afterwards paid to the Teſtator, the Legacy will be good. *R. Ray.* 335.

If he deviſes a Sum to *A. and to be paid out of a Debt from the King*; tho the Debt fails, yet the Legacy ſhall be paid; for it was ſo much deviſed generally, and the Clauſe, how it ſhall be paid, was only a Direction for the better Payment. *R.* 2 *Ca. Ch.* 116.

If he deviſes 500l. *to his Uncle, viz. the Bond and Judgment for* 400l. *due from* A. *and* 100l. *in Money*; if the Teſtator receives from *A.* 300*l*. and takes a Note for the Reſidue of the Debt, the Uncle ſhall have 500*l*. 2 *Ver.* 681.

[Yet, if a Man having 2702*l*. 3*s*. Bank Stock, and 2000*l*. *India*, deviſes them to his Daughters, to be divided, and before his Death ſells 702*l*. 3*s*. of the Bank, it is an Ademption *pro tanto*. *Jeffreys* v. *Jeffreys*, *T.* 16 *G.* 2. 3 *Atkyns* 120.]

[If a Debt is deviſed, and the Teſtator afterwards receives it, it is an Ademption of the Legacy; but if a Sum is deviſed payable out of a Debt, Teſtator's receiving the Debt is not an Ademption of the Legacy. *Ford* v. *Fleming*, *H.* 2. *G.* 2. *Str.* 823.]

So, if the Deviſe is poſitive and direct *of a Sum out of ſuch a Debt*, and the Debt fails, the Legacy is loſt. *Semb.* 2 *Ca. Ch.* 116.

(3 Y. 18.) When Legatees ſhall abate.

If there are not Aſſets to diſcharge all the Legacies, the Legatees ſhall abate in Proportion. 2 *Ca. Ch.* 171, 124. *Ca. Ch.* 149.

And alſo the ſpecifick Legatees ſhall abate in Proportion. *Semb.* 2 *Ca. Ch.* 171. *Cont.* 1 *P. W.* 422. 1 *Ver.* 31. *Vide* (3 Y. 19.)

[If a Man charges all his Real and Perſonal with Payment of Debts, a ſpecific Deviſe is ſubject to it, if the Reſidue is not ſufficient. *Clark* v. *Sewell*, *T.* 1744. 3 *Atkyns* 96.]

So, if the Executor gives a Statute, Mortgage, or other Security to one Legatee, and afterwards becomes Inſolvent, whereby the other Legacies are not paid; the Legatee who has the Security, ſhall abate in Proportion. *R. Ca. Ch.* 149.

Tho' ſuch Security was given upon the Marriage of the Legatee. *Ca. Ch.* 149.

So, if Lands, *&c.* are deviſed to be ſold for Payment of Legacies, and are not ſufficient for all; the Legatees ſhall abate in Proportion. 2 *Ca. Ch.* 25.

So, if a Teſtator deviſes that his Executor ſhall aſſign 100*l. per Ann.* in Land to *A.* and his Heirs, 200*l.* to *B.* and 300*l.* to *C.* and after the 100*l. per Ann.* is aſſigned, the other Lands are not ſufficient for the other Legacies; *A.* ſhall abate in Proportion. *R.* 2 *Ca. Ch.* 25.

So a Legatee ſhall abate in Proportion, tho' his Legacy is given to be paid *in the firſt Place.* 1 *Ver.* 31.

[Appointing a Legacy to be paid at a ſooner Time does not give it a Priority; but in Caſe of Deficiency, it muſt abate in Proportion. *Clark* v. *Sewell*, *T.* 1744. 3 *Atkyns* 96.]

[If *A.* gives his Wife a general Legacy, to be paid immediately after his Death out of the firſt Money got in, and that ſhe ſhall be intitled to ſaid Legacy in bar of Dower and Thirds; if ſhe is not entitled to Dower, ſhe ſhall abate; but if entitled, ſhe ſhall not abate. *Blower* v. *Morret*, *T.* 1752. 2 *Vezey* 420.

Tho' he is Executor, and it was given him for his Trouble. 2 *Ver.* 434. 2 *P. W.* 25. *Heron* v. *Heron*, *P.* 1741. 2 *Atkyns* 171.

[If *A.* having a Mortgage for 500*l.* and no other Sum out at Intereſt, deviſes to *B.* 500*l.* to remain at Intereſt on ſuch Securities as he ſhould leave, or to be put out on Government Securities; this is not a ſpecifick Legacy, and *B.* ſhall abate in Proportion. *Lawſon* v. *Stich*, *P.* 1738. 1 *Atkyns* 507.]

[A Deviſee of an Annuity for Life charged on Perſonal Eſtate ſhall abate in Proportion with other Legatees. *Halton* v. *Medlicot*. *Hume* v. *Edwards*, *P.* 1749. 3 *Atkyns* 693.]

(3 Y. 19.) When not.

But if a particular Chattel is deviſed *in Specie*; the Legatee ſhall have it intire, and not abate in Proportion to the other Legatees. 1 *Ver.* 31. 2 *Ver.* 111. *Eq. R.* 87.

[Yet, Jewels deviſed as a ſpecifick Legacy ſhall be applied to pay ſimple Contract Debts, if the Reſt of the Perſonal falls ſhort, in eaſe of the Real Eſtate. *Clarke* v. *Clarke*, *in Sc. M.* 1721. *Bunb.* 90.]

[If there are ſpecifick Legacies, and Money Legacies, and not Aſſets ſufficient beſides to pay Debts, there ſhall not be a proportionable Deduction, but the Money Legacies ſhall be applied firſt. *Cotterell* v. *Chamberlain*, *in Sc. H.* 1718. *Bunb.* 32.]

[If there is a ſpecific Deviſe of Land, the Deviſee ſhall not contribute with the Heir at Law to ſatisfy Creditors, if the Real Aſſets of the Heir are ſufficient. *Palmer* v. *Maſon*, *M.* 1737. 1 *Atkyns* 505.]

If a Legacy is given to a Charity, and the Spiritual Court prefers it, as it ought, by the Civil Law; Equity will not grant an Injunction, nor oblige the Legatee to give Security to refund. 1 *Ver.* 230.

If

If *A.* deviſes *that his Executor ſhall receive his Debt of* 8000l. *from the Chamber of* London, *and that then he ſhall pay* 2000l. *to an Hoſpital*; tho' the Debt in the Chamber of *London* is reduced to 6000*l.* the Executor ſhall pay 2000*l.* to the Hoſpital. *R.* 2 *Ver.* 547.

[Legacies of Stock are ſpecific or not, according as the Intent of Teſtator appears from the Will and Circumſtances, that he intended to confine it to the Stock he then had, or not. *Avelyn* v. *Ward*, *H.* 1749. 1 *Vezey* 420.]

[If Teſtator has *South-Sea* Stock at making his Will, and at his Death ſufficient to anſwer a Deviſe of it, it is a Specific Legacy, and ſhall not abate. *Ibid.*]

If *A.* deviſes his *Perſonal Eſtate in* W. *to* B. and alſo deviſes 300 l. *to another, to be paid out of his Perſonal Eſtate*, generally; if he has ſufficient Perſonal Eſtate elſewhere to pay the 300*l.* *B.* ſhall not abate. *R. Eq. R.* 87.

[If *A.* having Wife and two Children, and by Will gives his Wife (otherwiſe unprovided) 120*l.* *per Annum*, for Life, Limitation over to a Son, and directs Executors to purchaſe it in long Annuities, or if they cannot, to purchaſe Lands of 200*l.* *per Annum*, to pay the Wife's Annuity clear, with Remainders over; Executors to pay 30 l. *per Annum* out of Profits of Reſidue to Wife for Maintenance of Child; gives other Legacies, and the Reſidue to be put out for Children's Advantages; the Wife on Deficiency of Aſſets ſhall not abate. *Lewin* v. *Lewin*, *T.* 1752. 2 *Vezey* 415.]

Yet a ſpecifick Legatee ſhall abate in Proportion, where there is no Fund to pay the Legacy, but out of the ſpecifick Legacies; as, if a Man *deviſes his Perſonal Eſtate in* W. *to* A. *and his Perſonal Eſtate in* H. *to* B. *and then deviſes* 300*l.* *to* C. but has no Perſonal Eſtate, except in *H.* and *W.* there ſhall be an Abatement by *A.* and *B.* in Proportion. *Eq. R.* 87, 8.

So, in ſuch Caſe, a Legacy for a Charity ſhall abate in Proportion, if it is not to the Poor at the Funeral. 2 *P. W.* 25. 1 *P. W.* 422.

What ſhall be an Aſſent to a Legacy, *Vide in Adminiſtration*, (C. 6, 7.—*Vide Ante*, (3 G. 4.)

When Legatees ſhall refund, *Vide Ante*, (3 G. 3.)

Who ſhall be Reſiduary Legatee, *Vide Ante*, (3 G. 7.)

(3 Z.) Marriage-Settlement.

(3 Z. 1.) When it ſhall be inforced.

IF a Man enters into Articles to make a Marriage-Settlement, and dies; his Heir ſhall be compelled to make it. *R.* 2 *Vent.* 343.

Tho' the Articles are made before Marriage, to the Woman herſelf, and the Marriage is a Releaſe in Law of the Contract. *R.* 2 *Vent.* 343.

[So if Tenant for Life, with Power to make Jointure, covenants before Marriage to ſettle, and dies before Settlement executed, the Remainder-Man ſhall perfect it. *Lady Coventry* v. *Lord Coventry*, *T.* 10 *G.* *Str.* 596.]

So, if a Man covenants to make a Settlement upon the Marriage of his Daughter; he ſhall be compelled to make it, tho' his Daughter, after the Marriage, dies before the Settlement is made.

So, if a Man gives a Bond to make a Jointure, he ſhall be compelled to make it, and not to forfeit his Bond. 2 *Ca. Ch.* 88.

So, if a Man gives a Bond to ſettle 300*l.* *per Ann.* Jointure, and dies, his Heir ſhall be compelled to do it. 2 *Ca. Ch.* 89, *&c.*

So his Deviſee, tho' no particular Land is charged. *Ibid.*

So, if a Man covenants by Articles to make a Settlement of 400*l.* *per Ann.* for a Jointure, and afterwards makes a Settlement, but the Land is only of 300*l.* *per Ann.* Value; he ſhall be decreed to ſettle ſo much *in Specie* as would have made 400*l.* *per Ann.* at the Time of making of the Settlement. *R.* 1 *Ver.* 217, 8.

If the Covenant is to ſettle Lands, *which ſhall continue of* 400l. *per Ann.* Value, he ſhall make a Settlement of ſo much as now are of that Value. 1 *Ver.* 218.

If a Man covenants to make a Jointure out of his Eſtate; all his Lands are bound to it. 1 *Ver.* 64. 2 *Ver.* 482.

Otherwiſe, if he covenants for particular Lands, and that ſuch Lands are of ſo much Value. 1 *Ver.* 64. *Ch. R.* 148.

If a Man *recites a Marriage to be intended between* A. *and his Daughter; and if his Daughter after the Age of Sixteen refuſes to marry* A. A. *ſhall have* 20,000*l.* *and if the Marriage is had after her Age of Sixteen,* A. *ſhall have all his Real and Perſonal Eſtate:* The Marriage is had before ſhe is Sixteen, and after that Age the Daughter dies without Iſſue; *A.* ſhall have all the Real and Perſonal Eſtate. *R.* 1 *Ver.* 339.

If a Man upon Marriage covenants to make a Settlement for a Jointure, and dies before it is made, or the Portion paid; the Wife ſhall compel the Settlement, tho' ſhe is Executrix or Adminiſtratrix, whereby ſhe has the Portion alſo. *Semb. Cont. but Q.* 1 *Ver.* 463.

[When a Wife ſues her Huſband that he may ſettle Lands for her Jointure, purſuant to Articles, and perform theſe Articles; it is no Bar that ſhe has eloped with an Adulterer, much leſs if it is not put in Iſſue in the Cauſe. *Sidney* v. *Sidney, P.* 1734. 3 *P. W.* 269.]

If a Man upon the Marriage of his Son, agrees to make a Settlement in ſuch a Manner; it ſhall be decreed, tho' by the Conſent of the Son, he afterwards makes a Settlement different, and that is confirmed by a Fine. 1 *Ch. R.* 192. 2 *Ver.* 702.

[If a Father gets a Son to execute a Deed *ſecretly*, charging himſelf the ſame Morning his Marriage Agreement is executed, it ſhall be ſet aſide, as being in Fraud of the Marriage Agreement. *Martins* v. *Bennett, H.* 1733. *Bunb.* 336.]

So, it ſhall be decreed againſt an Heir; tho' the Covenant was only for him, his Executors and Adminiſtrators. *R.* 2 *Ver.* 482.

If *A.* covenants to make a Settlement *to the Uſe of himſelf and his Wife, and the Heirs Male of their Bodies, Remainder to the Heirs Female, &c.* and dies before the Settlement made, having a Son and Daughter, and the Son covenants to levy a Fine for the Payment of Debts, and dies without Iſſue before the Fine levied: The Settlement ſhall be decreed to the Daughter, purſuant to the Intent of the Articles. *R.* 2 *Ver.* 704.

[If a Settlement is executed after Marriage to Huſband for Life, Wife for Life, and the Heirs of the Body of Huſband by Wife, the Court will carry it into Execution ſtrictly, if made in purſuance of Articles previous to Marriage, otherwiſe not. *Glanville* v. *Payne, P.* 1740. 2 *Atkyns* 39.]

[If a Settlement after Marriage gives Iſſue an Equivalent for what they were intitled to by Settlement previous to Marriage, the Court will carry it into Execution, otherwiſe not. *Ibid.*]

A Limitation in Marriage Articles to Huſband for Life, to Wife for Life, to the Iſſue of their two Bodies, will not intitle the Huſband to diſpoſe as he pleaſes, but ſhall be carried into ſtrict Settlement. *Villiers* v. *Villiers, M.* 1740. 2 *Atkyns* 71.]

So, if a Man upon the Marriage of his Brother agrees for the Settlement of his Land *upon his Brother, if he himſelf dies without Iſſue*, and the Wife of the Brother has 180*l.* for her Portion; the Deviſee of the Land (the Deviſor being dead without Iſſue, and the Portion being 180*l.*) ſhall be compelled to perform the Agreement, tho' it was to make an Eſtate after an Entail. *R.* 2 *Vent.* 354.

So, if a Truſtee ſigns a Deed, to teſtify his Aſſent, whereby it is agreed, that the Land ſhall be ſettled, to the Uſe of a Wife for Jointure; tho' the Land was ſubject to the Payment of a Debt due to the Truſtee, yet the Jointure ſhall be ſettled prior to the Debt. *R.* 2 *Ca. Ch.* 211.

So, if the Settlement is *for a Portion to be paid at full Age, or Marriage with the Conſent of her Father, and if ſhe dies before ſuch Marriage or Age, that it ſhall be paid to another*; if the Daughter has the Conſent of her Father for a Treaty upon her Marriage, and he does not afterwards diſagree, tho' the Marriage was clandeſtine, without the Privity of the Father, the Portion ſhall be paid. 1 *Ch. R.* 3.

[If on Marriage two Fathers agree to ſettle certain Lands; one does ſo, the other gives Bond to do it; he has not his Election to ſettle or forfeit, but muſt ſettle the Lands, which was the original Agreement. *Chilliner* v. *Chilliner*, *T.* 1754. 2 *Vezey* 528.]

So, if *A.* by Letter propoſes a Settlement upon a Treaty of Marriage for his Nephew, if 2500*l.* Portion is given; and the Marriage proceeds and ſuch Portion is given; the Settlement ſhall be decreed, tho' no Anſwer was ſent to the Letter, nor the Marriage had with the Privity of the Uncle. *Ch. R.* 147.

Or, by Letter to a Friend of *B.* propoſes 1500*l.* Portion with his Daughter, and the Marriage takes Effect, tho' no Agreement was made directly upon ſuch Letter. 2 *Ch. R.* 285.

If a Settlement is made *in Conſideration of* 500*l.* *in Money and Goods*; after fifteen Years, it ſhall be decreed, without Inquiry whether the Huſband had the 500*l.* 2 *P. W.* (618.)

But if a Marriage-Settlement is made before Marriage, all precedent Agreements ſhall be intended to be extinct, *Semb.* 1 *Ver.* 369.

If a Settlement is alledged to be contrary to an Agreement, and a Trial is directed to try what was the Agreement; the Settlement ought to be admitted for Proof of the Agreement. *R. per North, and a Decree to the contrary per Lord Nottingham reverſed.* 1 *Ver.* 246.

Yet where the Settlement varies from the Articles, without an Intent apparent, it ſhall be decreed to be made conformable to the Articles, tho' the Settlement was before Marriage. *R.* 2 *Ver.* 659.

[A Settlement after Marriage on an Infant, and no Settlement before, and no Proof of the Huſband's being in Debt, is good. *Middlecome* v. *Marlow*, *H.* 1742. 2 *Atkyns* 519]

[If a Settlement is juſt in general, the Court will not weigh nicely the particular Advantage on either Side. *Ibid.*]

[An Infant is bound by a Settlement made on her Marriage, where it is made with Approbation of Parents and Guardians. *Hervy* v. *Aſhley*, *P.* 1748. 3 *Atkyns* 607.]

[Marriage Agreements cannot be ſet aſide, becauſe it would affect the Intereſt of third Perſons, *the Iſſue*. *Ibid.*]

[Other Agreements are entire, and if either Party fails in Performance in Part, it cannot be decreed in Specie, but muſt be left to an Action; in Marriage Agreements it is otherwiſe; and if the Relations of either Party fail in Performance, the Children may compel Performance; thus, if Wife's Father agrees to give a Portion, and Huſband's Father to make a Settlement, tho' the Portion is not paid the Children may compel the Settlement. *Ibid.*]

[Tho' a Father or Guardian ſhould act fraudulently, the Marriage Agreement ſhall not be ſet aſide, but the Delinquent, Father, Guardian, or Huſband, decreed to make Satisfaction. *Ibid.*]

(3 Z. 2.) When not.

But by the St. 29 *Car.* 2. 3. No Action ſhall be brought to charge a Defendant on an Agreement on Conſideration of Marriage, unleſs that, or ſome Note of it, be in Writing ſigned by the Party, or ſome authorized by him.

A Letter is a ſufficient Note, to ſhew an Agreement to give a Marriage-Portion. *R.* 2 *Vent.* 361. *Vide Ante*, (2 C. 4.)

But if *A.* by Letter promiſes 1000*l.* to his Niece in Marriage, yet by the ſame Letter diſſuades her from a Marriage with *B.* and ſhe afterwards marries *B.* with the Conſent of *A.* the Money ſhall not be decreed. *R.* 2 *Ver.* 202.

If a Marriage is agreed upon between the Fathers of a Son and a Daughter, and Minutes are taken of it by Counſel, and before the Writings are fixed, one of the Fathers dies; the Settlement ſhall not be decreed, not being ſigned by either Party, and before the Execution of the Deeds many Variations in the Minutes might have happened. *Eq. Abr.* 21.

[If a Mother at the Marriage tells the Huſband, "My Eſtate will come between "my Daughters," and afterwards gives Directions to an Attorney to prepare a Settle-

Settlement of Part to Huſband and Wife, and the right Heirs of the Huſband, but both die before it is compleated, the Settlement ſhall not be carried into Execution in favour of Huſband's Brother and Heir. *Brownſmith* v. *Gilborne*, *H.* 13 *G. Str.* 738.]

[If a Man having an Eſtate in Poſſeſſion, and a Leaſehold, and being intitled to an Eſtate-tail after his Mother's Jointure determined, by Marriage Articles ſettles Part of his Wife's Portion on her and the Iſſue, and the Leaſehold on her for Life in bar of Dower, and then covenants on his Mother's Death to ſettle 100 *l.* *per Annum* for every 1000 *l.* on her for Life, then on the Iſſue, and he dies without Iſſue in the Mother's Life-time; the Heir ſhall not be compelled to perform. *Whitmel* v. *Farrel*, *T.* 1749. 1 *Vezey* 256.]

And if Articles, with the Wife before Marriage, provide, *that ſhe ſhall diſpoſe of the Profits of her Eſtate, during the Coverture*, which is veſted in a Truſtee for that Intent, and after Marriage, the Truſtee with the Approbation of the Wife pays the Profits to the Huſband; he ſhall not account to the Wife for the Profits not diſpoſed of according to the Agreement; for by Law the Articles are deſtroyed by the Marriage. *R. Ca. Ch.* 21.

So, if *A.* upon the Marriage of his Daughter agrees *that his Manor ſhall be charged with* 4000l. *for her Portion, provided that if the Huſband does not ſettle a Jointure anſwerable to it, within two Years, he ſhall have only Intereſt at the Rate of* 3l. *per Cent. for his Life, and the Manor ſhall be to the Daughter and the Heirs of her Body*; the Wife dies within the two Years before any Settlement made; the Huſband ſhall not have the Portion, or the Manor but only for his Life. *R.* 1 *Ver.* 68.

So, if the Portion was to be paid *if the Huſband ſettled a Jointure within three Years*, and the Wife dies within the three Years, before the Jointure ſettled; the Huſband ſhall not have the Portion. 1 *Ver.* 69.

[If *A.* on Marriage of his eldeſt Son *B.* in Conſideration thereof, and of Portion, ſettles his Eſtate to himſelf for Life, to Truſtees for 200 Years, to *B.* and the Heirs Male of him and his Wife, with Remainders over, the Truſt to raiſe 1500*l.* by Profits or Fines, and to pay 500*l.* in ſix Months, and 1000*l.* in twelve Months after *A.*'s Death, as he ſhould appoint, if none, void; and *A.* has another Son *C.* to whom he afterwards gives 3000*l.* which *C.* lays out in Lands; and *A.* by Will directs 600*l.* Part of the 1500*l.* to be paid to *C.* on his ſettling the Lands purchaſed on the Heirs-male of his Body, and in Default on the right Heirs of *A.*; *A.* dies, the 600*l.* is paid *C.* who gives Receipts for it as the Legacy in his Father's Will; *C.* marries, has Iſſue Male and Female, the Male exiſts many Years, then fails, *C.* dies, *B.* dies; the Son of *B.* cannot have this Settlement carried into Execution againſt the Co-heirs of *C.* when it is impoſſible to bar the Remainder to him (the Son of *B.*) nor ſhall he have the 600*l.* repaid. *Parker* v. *Philips*, *T.* 1750. 1 *Vezey* 530.]

So, if a Father agrees to give 3000*l.* with his Daughter; but by his Will gives her only 2000*l.* and dies before the Marriage, and the Huſband accepts the Legacy; he cannot afterwards demand 1000*l.* more: For his Equity is to have 3000*l.* or Nothing. *Mo. Ca. in Eq.* 3. *.

* 2d Part of 2 *Mod. Ca.*

(3 Z. 3.) To what Charges ſubject.

A Marriage-Settlement ſhall not be incumbred by a voluntary Settlement for the raiſing Portions for the Children of a former Marriage. *R.* 2 *Vent.* 363. *Vide Poſt*, (4 I. 1, *&c.*)

Nor, by a voluntary Settlement made during a former Marriage. *R. Ca. Ch.* 100.

So, if *A.* covenants to ſettle 200*l.* *per Ann.* without deſcribing any Lands in particular, upon the Children of the firſt Marriage, and afterwards, upon a ſecond Marriage, ſettles Part of the Land, which he had at the Time of the former Articles, for the Jointure of his ſecond Wife, who had no Notice; ſhe ſhall not be bound by the former Articles. *R.* 2 *Ver.* 482, 3.

If *A.* exhibits a bill to redeem a Mortgage againſt a Woman, and ſuggeſts that her Huſband was only the Aſſignee of a Mortgage; the Woman may give in

in Anſwer, a Settlement for her Jointure without Notice of the Mortgage, and that her Huſband pretended a Title by Deſcent, without anſwering, whether her Huſband had any other Title than as Aſſignee of a Mortgage; tho' it would not be a good Plea. 2 *Ver.* 701.

But if *A.* upon his Marriage gives a Bond to leave to his Wife 500*l.* or a third Part of his Perſonal Eſtate, and afterwards becomes a Bankrupt; the Wife ſhall not have the 500*l.* if ſhe does not come in as a Creditor for it in Proportion with other Creditors; and in ſuch Caſe, the Intereſt of her Proportion ſhall be paid to the Creditors during the Life of her Huſband. *R.* 2 *Ver.* 662.

[If *A.* dies indebted, leaving a Leaſehold ſubject to Mortgages, with Covenant for Payment, and other Perſonal Eſtate, and deviſes to his Son for Life, then to the Iſſue of his Body with Limitations over, and makes him Executor and reſiduary Legatee, and he by Marriage-Settlement calling himſelf Heir and Executor, and reciting the Will, aſſigns this Leaſehold to Truſtees to permit him to receive the Profits for Life, then to his Wife, then to the Iſſue, then to thoſe intitled under the Will; yet the Iſſue ſhall ſhall not have it diſincumbered of their Father's Debts. *Clarke* v. *Sampſon*, *T.* 1748. 1 *Vezey* 100.]

(3 Z. 4.) Proviſion for Portions.

IF a Man makes a voluntary Settlement for the Portion of a Daughter by his former Wife, and then takes a ſecond Wife, and ſettles the ſame Land for her Jointure, without Notice of the Portion, and by his Will deviſes other Lands to his Wife, which ſhe refuſes; the Daughter ſhall have the other Lands till her Portion is raiſed. 1 *Ver.* 219. *Eq. Abr.* 221.

If by Marriage-Settlement Lands are limited *to the Huſband and Wife for their Lives, and afterwards to the firſt and other Sons in Tail; and if the Huſband dies without Iſſue Male, to* A. *for* 500 *Years for Daughters Portions*; tho' there be Iſſue Male, which ſurvives the Father, and then dies without Iſſue, a Daughter ſhall have the Portion. *R.* 1 *Lev.* 35.

If *A.* after the Death of his Wife makes a Settlement *for raiſing* 1001. *for each of his younger Children*, and afterwards marries again; the Children by the ſecond Wife ſhall have the ſame Portions. *R.* 1 *Ver.* 335.

[If a Widow having Children, by Articles previous to her ſecond Marriage, gives 500 *l.* to her intended Huſband during his Life, and if no Children of the Marriage, then to return to her or her Heirs; and there are Children of the ſecond Marriage, who all die under Age in her Life, and then ſhe dies, the Huſband ſhall have the Intereſt for Life, and then the Children of the firſt Marriage. *Steadman* v. *Palling*, *H.* 1746. 3 *Atkyns* 423.]

If Land is charged with Portions, the Heir cannot give Perſonal Security for them in Diſcharge of the Land. 1 *Ver.* 338.

Nor ſhall he he allowed to pay them, before the Time limited by the Settlement, *viz.* full Age or Marriage. 1 *Ver.* 338.

If a Man gives a Portion to a Daughter *to be paid at the Age of Twenty-one Years*, and ſhe marries, and dies before; it ſhall be paid to her Huſband, or her Executor. 2 *Ca. Ch.* 94.

If *A.* by Marriage-Settlement makes a Proviſion for Daughters of 1500*l.* a-piece, *to be paid at Eighteen or Marriage, and if any of them die before, the Survivor to take the Whole*; and afterwards ſettles other Lands for the Payment thereof, *at the Age of Twenty-one or Marriage, and that there ſhall be no Survivorſhip*; this controuls the firſt Deed. *R.* 2 *Ch. R.* 8.

If a Term is limited *after the Death of the Father, upon Truſt for raiſing Portions for his Daughters, at the Age of Eighteen or Marriage*; the Term may be ſold for that Purpoſe in the Life-time of the Father. *Sal.* 159. *Semb.* 2 *Ver.* 355. *R.* 2 *Ver.* 459, 460, 656.

So, if the Term, after the Life of the Father, be upon Truſt, *that if the Father die without Iſſue Male by his Wife, having Daughters*, and the Wife dies without a Son; the Term may be ſold in the Life-time of the Father, for the

Portions of Daughters, when they attain ſuch an Age, or marry. *R. per* 3 *J.* 2 *Jon.* 202. *Per Cowper*, 1 *Sal.* 159. 2 *Ver.* 657. *Rep.* 5 *G.* 2. 2, 22.

[If *A.* on Marriage ſettles his Eſtate to himſelf for Life, Remainder to his Sons in Tail-male, Remainder to Truſtees for 1000 Years, to provide for Daughters by Profits, Mortgage, or Sale, with Remainders over, with Proviſo, that if he prefers them in Marriage with Portions equivalent, or the Remainder-Man pays them, the Term ſhould ceaſe; and the Wife dies without Iſſue-male, leaving three Daughters, their Portions ſhall be raiſed in the Father's Lifetime, with Intereſt from the Mother's Death, at which Time they firſt veſted. *Hebblethwaitte*, v. *Cartwright*, *P.* 7 *G.* 2. *C. T. T.* 31.]

[Where a Term for Years or other Eſtate is limited to Truſtees, for raiſing Portions for Daughters, payable at a certain Time, which is become a veſted Intereſt, they ſhall not ſtay to the Death of Father and Mother, unleſs ſome Intention appears (and a very ſlight Circumſtance is ſufficient) to poſtpone it. *Stanley* v. *Stanley*, *M.* 1737. 1 *Atkyns* 549.]

If the Term is to raiſe Portions for Daughters, and the Inheritance deſcends to the Leſſee; *Chancery* will prevent the Merger of the Term. 2 *Ver.* 91, 208. *Vide Poſt*, (4 W. 24.)

So, if one has a Power to raiſe Portions for Children, and by Deed charges them upon Land, but by the Eviction of Part, the Reſidue is not ſufficient; the Land may be decreed to be ſold. 2 *Ver.* 311.

Tho' he adds, *that for the raiſing them, the Truſtees ſhall take all the Rents and Profits*; for that does not reſtrain the general Charge. *R.* 2 *Ver.* 311.

If there be a Term for raiſing Portions for Daughters, without ſaying, *at what Age, or Time*; they ſhall be raiſed, with reaſonable Maintenance from the Death of the Father. 2 *Ver.* 460.

If the Portion is to be raiſed *as the Father ſhall appoint*; it ſhall be raiſed, tho' the Father dies without Appointment. 2 *Ver.* 665.

But if Portions for Daughters *at ſuch an Age, if the Father dies without Iſſue Male, are to be raiſed for his Daughters, if not otherwiſe provided for, and* 30*l.* *per Ann. in the Interim*; tho' the Mother dies without a Son, the Term ſhall not be decreed to be ſold for the Daughters Portions; for the other Contingency, *if they are not otherwiſe provided for*, cannot happen during the Life of the Father. *R.* 1 *Sal.* 160. 2 *Ver.* 640, 657.

So, the 30*l.* *per Ann.* ſhall not be decreed to the Daughter, or her Huſband; for the Father ſhall not pay Maintenance out of the Profits of a Term not to commence till his Death; and therefore it muſt be intended of Maintenance to be paid if the Father dies without Iſſue Male, before the Age, or Marriage of his Daughter. *R.* 1 *Sal.* 160.

If *A.* gives Portions to his younger Children, ſecured by a Mortgage from *B. and if the Heir of* A. *does not pay them, that they ſhall be charged upon his Land*; *B.* pays the Portions, which are put out upon another Security, approved of by a Maſter in *Chancery*, with the Conſent of the Guardian, and are afterwards loſt; the Land of the Heir ſhall not afterwards be charged. *R.* 1 *Ver.* 337.

If Land is charged with 500*l.* for *A.* and the Truſtee raiſes the Sum and gives a Judgment to *A.* for it, and then dies inſolvent; the Land ſhall be diſcharged. *Dub.* 2 *Ver.* 85.

If a Term after the Death of Huſband and Wife, is for the raiſing of Portions out of the Profits after the Commencement of the Term, to be paid at the Age of Twenty-one; neither the Principal or the Intereſt ſhall be raiſed, till the Term commences in Poſſeſſion. 2 *Ver.* 761. 1 *P. W.* 449.

[If by Marriage-Settlement Lands are limited to *A.* for Life without Waſte, Remainder to Truſtees to preſerve, *&c.* to Wife for Life, Remainder to his firſt and other Sons of *A.* and in Default Remainder to Truſtees for 500 Years, in Truſt, by Rents or Sale, to raiſe 2000*l.* for Daughter, to be paid at Twenty-one, or Marriage; the Daughter ſhall not have it raiſed in the Father's Lifetime. *Stevens* v. *Dethick*, *H.* 1743. 3 *Atkyns* 39.]

If a Portion is to be paid *by the Perſonal Eſtate, and, if that is not ſufficient, by the Rents and Profits of the Real*; if it is neceſſary, the Real Eſtate ſhall be ſold to make it good. *R.* 2 *Ver.* 424.

So, if a Term commences after the Death of the Husband, *to raise Portions, if no Son, for Daughters, provided, that the Daughters survive their Father*; no Portion shall be raised if the Daughter dies in the Life-time of her Father, tho' she married before her Death. *R.* 2 *Ver.* 655.

So, if a Portion is payable, and before Payment one Child dies; it shall be decreed to his Executor, or Administrator. *R.* 1 *Ver.* 276.

[If there is Provision for Daughters Portions, by a Term after the Mother's Death, to grow due and payable at Twenty-one, or Marriage, and if any die before Portion due and payable, to the Survivors; and there are two Daughters who both attain Twenty-one, and marry with Consent, and one dies, leaving Children before the Mother, her Portion shall go to her Representatives, and not to her Sister. *Emperor* v. *Rolfe*, *H.* 1748. 1 *Vezey* 208.]

If a Term is upon Trust, that if the Father dies without a Son, to raise Portions for Daughters *out of the Rents and Profits, as soon as conveniently may be*; they may be raised by Sale. *Per Parker*, *P. W.* 417, 420.

Otherwise, if it was *out of the annual Rents and Profits, or by Leases for Lives, or Years. Per Macclesfield, and affirmed in Parliament*, 2 *P. W.* 19. *Vide* 1 *P. W.* 419.

[So, if on Marriage of *A.* and *B. A.* settles his Estate, and therein provides for raising Portions for Daughters, and the Father of *B.* settles his Estate, and therein is a Term (with several Remainders over) the Trust of which is to raise 10,000 *l.* for younger Children, by Rents, Issues and Profits, or Leases for three Lives, or determinable upon three Lives, reserving the old Rent, or by granting Copyholds on Fines, to be paid to Daughters at Eighteen or Marriage, and to the Sons at Twenty-one, or as soon after as it could be raised out of the Premisses *as aforesaid*; the 10,000 *l.* cannot be raised by Sale or Mortgage. *Semb. per Macclesfield* C. *Mills* v. *Banks*, *T.* 1724. 3 *P. W.* 1.]

But if a younger Child dies in the Lifetime of the Father, before Marriage, the Portion shall not be raised. 1 *Ver.* 335. *Vide Ante*, (3 P. 3.)

[If there is a Term of Years to raise Daughters Portions, payable at Sixteen, and a Proviso, that if there is no Daughter living at the Time of the Failure of Issue-male, the Term shall attend the Inheritance; and there is one Daughter who attains Sixteen, marries without Consent, and no Son by the Marriage, and the Daughter dies without Issue *in the Lifetime of her Father and Mother*, the Portion sinks. *Gordon* v. *Raynes*, *P.* 1732. *P. W.* 134.]

[If 9000 *l.* is settled by Marriage Articles in Trust for Husband and Wife for Life, and then to the eldest Son, subject to raise and pay 5000 *l.* to younger Children as Father should appoint, and for want of Appointment, at Twenty-one, and Trustees in the mean Time at Liberty to raise Maintenance; Mother dies, leaving two Children, youngest dies at two, Father cannot claim the 5000 *l.* as his Representative, it not vesting in the Children, and there are no Words of vesting, but raising and paying at Twenty-one. *Hubert* v. *Parsons*, *P.* 1751. 2 *Vezey* 261.]

[If by Articles 2000 *l.* Part of 3000 *l.* vested in Trustees, is to be paid to such Son as shall attain Twenty-one, when he shall have attained Twenty-three, and the Eldest attains Twenty-one, and dies before Twenty-three, it is a vested Interest at Twenty-one, and the Time of Payment only is postponed. *Combe* v. *Combe*, *T.* 1741. 2 *Atkyns* 185.]

If the Land is not sufficient to raise Portions for all, there shall be an Abatement in Proportion. 1 *Ver.* 335.

[If *A.* by Articles before Marriage agrees to settle Land on *B.* for Jointure, then Part to raise Portions for younger Children, then the Whole in Tail-male, and that *B.*'s Portion should remain with Trustees till Settlement made, but to enable *A.* to settle, *B.*'s Portion to be applied to pay off Incumbrances, and the Rest to *A.* and Marriage had, no Settlement made; *A.* dies, no Land appears, the Right to the Portion survives to the Wife, and the Issue of the Marriage are not intitled. *Pyke* v. *Pyke*, *H.* 1749. 1 *Vezey* 376.]

A Portion secured by Settlement, or Articles for a Settlement, shall not be raised as a Debt out of the Personal Assets. 2 *P. W.* 437.

[If

[If a Husband promiſes his Wife that her Daughter ſhall have her Jewels, and after her Death puts them in a Cheſt, and delivers them with an Inventory and the Key to a Friend, for the Daughter's Uſe; this is a ſufficient Delivery to veſt the Property, and ſhall not be altered by his afterwards taking out ſome of the Jewels, and giving them to his ſecond Wife. *Lucas* v. *Lucas*, *T.* 1738. 1 *Atkyns* 270.]

[If in Settlement there is a Term to raiſe 1000 *l.* for Daughters Portions, with Proviſo, that if Father by Deed or Will gives or leaves any *Sum of Money* to his Daughters, it ſhould be a Satisfaction *pro tanto*, unleſs he declare the contrary, and he leaves them Land; this is no Satisfaction. *Per Talbot*, C. *Chaplin* v. *Chaplin*, *P.* 1734. 3 *P. W.* 245.]

[If by Marriage-Settlement a Term is created in Lands in Truſt to raiſe Portions for Daughters, with Proviſo, that if Lands of an Eſtate of Inheritance deſcend from the Huſband to his ſaid Daughters of as great Value as the Portions, then the Term to ceaſe for the Benefit of the next in Remaindor or Reverſion; neither Lands of which the Huſband is ſeizedin Fee and deviſes to his Daughters in Tail nor Lands deſcending from him to them in Tail, nor Reverſions in Tail expectant on the Death of others, are ſuch Eſtates of Inheritance as are within the Meaning of the Proviſo. Lands which ought to go in Satisfaction ſhall be valued at the Time of the Deſcent, not when the Portions become payable. *Savile* v. *Savile*, *P.* 1740. 2 *Atkyns* 458.]

[A Limitation to a Daughter after ſeveral other Limitations, is conſidered as a Proviſion, the Time when it is to take place makes no Difference. *Goring* v. *Naſh*, *M.* 1744. 3 *Atkyns* 186.]

[If a Man has a Power by Marriage-Settlement to raiſe a Sum for the Portion and Portions, of all and every younger Child and Children, in ſuch Manner, at ſuch Time, and under ſuch Limitations, as he by Will ſhall direct, and he by Will, reciting that two of his three younger Children are amply provided for, appoints the Whole to the Third, the Power is not purſued, and it is a void Appointment. *Menzey* v. *Walker*, *P.* 8 *G.* 2. *C. T. T.* 72.]

[But if Father has a Power to raiſe 1500 *l.* for Benefit of younger Children, in ſuch Proportion, Manner and Form, in all Reſpect, as he ſhall appoint, and he directs 450 *l.* to *A.* 1050 *l.* to *B.* and nothing to *C.* who has a good Eſtate, it is a good Appointment. *Auſten* v. *Auſten*, *H.* 1733. *C. T. T.* 74.]

[Where a Sum is provided by Marriage-Settlement for younger Children, and one of them becomes eldeſt, he ſhall have no Part of this Sum; but where by private Act of Parliament the Sum was to be appointed to *A. B.* and *C.* by Name, tho' *A.* then a younger Child afterwards becomes eldeſt, he is capable of an Appointment in his Favour. *Jermyn* v. *Fellows*. *P.* 11 *G.* 2. *C. T. T.* 93. Q. Would it not be the ſame if they were *named* in a Settlement by Deed?]

[If by Marriage Articles it is agreed, that certain Sums be paid to Truſtees to permit the Intereſt to be taken by Huſband for Life, then by Wife for Life, then if there is a Son, and younger Child or Children, to pay the principal Sums to them; and a farther Covenant that the Wife's Father ſhall procure his Siſter to ſettle certain Freehold Houſes to the ſame Uſes, and they are ſo ſettled; and Huſband and Wife die, leaving a Daughter their eldeſt Child, and a Son; the Daughter ſhall be conſidered as a younger Child, and have the Money, and alſo the Houſes; for the Articles and the Deed ſhall be conſidered as one and the ſame Act, and equally a Proviſion for younger Children. *Heneage*, v. *Hunloke*, *M.* 1742. 2 *Atkyns* 456.]

[If a Grandmother *A.* having a Power creates a Term to commence after her Death to raiſe 300 *l. per Annum* for *B.* for Life, and after both their Deaths to raiſe a Sum to be paid among all the Children of *C.* except the eldeſt Son, as *C.* ſhall appoint, and for Want, equally; if *C.* has but one Child beſides eldeſt Son all to ſuch Child, if only eldeſt Son, all to him, if no eldeſt Son, then to the Executors of *A.*; at making, *C.* has only Son *D.* and Daughter *E.* afterwards, another Son *F.*; *C.* dies firſt without appointing, *D.* dies under Age, and *F.* becomes eldeſt Son; *E.* marries, *A.* dies, and then *B.* dies; this ſhall be conſtrued as Proviſion by Marriage-Settlement; and to avoid the Inconveniences of the Portions

tions veſting either at the Execution or the Death of *A.* or the Death of *C.* or of *B.* the Court will determine the Capacity of being a younger Son to continue till the Time of Payment, and *E.* ſhall have the whole Sum. *Ld. Tynham* v. *Webb*, *H.* 1750. 2 *Vezey* 198.]

[If *A.* ſettles his Eſtate, ſubject to a Proviſo, on his Siſter and Huſband, and their Iſſue in ſtrict Tail-male, for them to raiſe 12,000 *l.* for their Children, and if they die without appointing the Proportion, then 2000 *l.* to be raiſed for each younger Son, and 3000 *l.* for each Daughter, payable at Twenty-one, with Intereſt from the Time of Appointment or Death of the Survivor, and they die without making Appointment, leaving four younger Sons and two Daughters, 14,000 *l.* ſhall be raiſed for them, and Intereſt only from the Death of the Survivor, tho' two attained Twenty-one during her Life. *Rolt* v. *Rolt*, *H.* 9 *G.* 2. *C. T. T.* 189.]

[If *A.* on Marriage ſettles long Annuities in Truſt for himſelf for Life, to his Wife for Life, to the Children in ſuch Manner as he ſhould appoint, and dies without Appointment, leaving one Child, it is intitled to them as an Intereſt veſted; the Father having only Power of diſpoſing among his Children, and there being but one, ſhe is intitled to the Whole. *Bellaſis* v. *Uthwatt*, *H.* 1737. 1 *Atkyns* 426.]

[Where Children have obtained a contingent Advantage under a Marriage-Settlement, the Court will not vary it after Marriage; thus, if Stock is transferred to Truſtees to pay the Dividends to the ſeparate Uſe of the Wife during Life, and if ſhe ſurvived her Huſband to transfer to her, or whom ſhe ſhould appoint, and for Want of Appointment *to her Iſſue*, the Court will not ſuffer any Part of the Stock to be ſold and paid to her during Coverture. *Okeefe* v. *Calthorpe*, *M.* 1739. 1 *Atkyns* 17.]

[If *A.* by Deed on the Marriage of his Son *B.* ſettles Lands on the Iſſue-male of *B.* and if none, then to be ſold and equally divided among *B.*'s Daughters; and by Deed *B.* directs his Eſtate to be ſold, and the Money equally divided among his ſix Daughters, provided he ſhould have no Son; and afterwards, after the Marriage of *C.* one of the Daughters with *D.* he by Deed, reciting the laſt, covenants that all right, either in Land or Money, that ſhould accrue to *C.* in her Life, or to *D.* in her Right, by the ſaid recited Deed, ſhould be veſted in Truſtees, to put out ſuch Share of the Money raiſed by Sale of the Manors, *&c.* as belonged to *C.* at Intereſt, and the Rents of her Share of the Eſtate, and the Intereſt of the Money raiſed by Sale thereof to pay to *D.* for Life, then to *C.* for Life, then to pay the Principal to the Iſſue of *D.* by *C.* (except the Iſſue-male of *D.* by *C.* for the Time being inheritable in the Manors, *&c.*) Share and Share alike to Sons at Twenty-one, to Daughters at Twenty-one, or Marriage; if any die before their Shares payable, to go to the Survivor: if all die, then to ſuch inheritable Son; if no Son, then to the Survivor of *D.* and *C.* and the Executors, *&c.* of ſuch Survivor; and there is one Child of this Marriage who ſurvives his Father, and then attains Twenty-one, and dies in his Mother's Lifetime; the Eſtate ſhall be ſold and divided equally among the ſurviving Daughters of *B.* one being dead unmarried, and the Share of *C.* belongs to her ſolely, and no Part of it to her Son by *D.* *Seamer* v. *Bingham*, *T.* 1743. 3 *Atkyns* 54.]

[The Court will decree the Proviſion made for one Child to be as extenſive as the Parent intended, where it does not introduce a Hardſhip, or leave the other Children in Diſtreſs. *Goring* v. *Naſh*, *M.* 1744. 3 *Atkyns* 186.]

[If *A.* by Marriage-Settlement recites the Proviſions he is intitled to by his Father's Settlement, and *inter al'.* a Share of 2000 *l.* after his Father's Death, and there is a Truſt for the Benefit of the Iſſue of the Marriage, and a Covenant that all *A.*'s Share of the 2000 *l.* or any other Proviſion for the Portions of the Father's younger Children as ſhould come to *A.* ſhall be within ſaid Truſt; and afterwards the ſurplus Profits of the Father's Eſtate limited for the Benefit of his Children, is in his Life-time decreed to be diſtributed among them; the Surplus ſhall not be included in the Truſt, nor would a Legacy from the Father to *A.* be included. *Vane* v. *Vane*, *M.* 1747. 1 *Vezey* 57.]

[If

[If a Bond is given for 2000*l.* for Children living at the Death of Father or Mother, and in Default, to the Executors of Huſband, a Child born after the Father's Death ſhall have a Share. *Miller* v. *Turner*, *H.* 1747. 1 *Vezey* 85.]

[If a Decree has ſettled a Wife's Portion to be laid out in Land for Huſband for Life, Wife for Life, and then to the Iſſue; the Court will not afterwards on a Suggeſtion that there is no Probability of Iſſue, and that the Huſband is in great Diſtreſs, grant Part to pay his Debts, and the Reſt to Wife's ſeparate Uſe. *Anon.* *M.* 1750. 2 *Vezey* 113.]

[If 20,000*l.* is provided for younger Children as Father ſhall appoint, and there are three Daughters and a Son, and Father makes another Settlement reciting this Proviſion, and his Intent that the Daughters ſhould have the Whole, and ſettles on the Son in Satisfaction of his Proviſion, on Condition he Releaſes, but makes no direct Appointment of his Son's Share to the Daughters, and afterwards by Will gives his Daughters ſo much as (with what is provided by his Marriage-Settlement) makes their Fortunes 10,000; they ſhall have only 10,000*l.* and not a Share of the Brother's 5000*l.* likewiſe. *D. Bridgewater* v. *Egerton*, *H.* 1750. 2 *Vezey*. 121]

[If by Settlement after Marriage (but for valuable Conſideration) there is a Truſt to raiſe Portions for Daughters on Failure of Iſſue Male, on whom the Eſtate was ſettled in Tail, they ſhall be raiſed; tho' the Portion or Conſideration was not paid, tho' the Term was in Remainder after Eſtates-Tail, and tho' a Daughter has given a general Releaſe, the Settlement not being known. *Hylton* v. *Biſcoe*, *T.* 1751. 2 *Vezey* 304.]

[If Eſtate is ſettled to Huſband and Wife for Life, then to Truſtees for a Term, in Caſe of no Iſſue-Male, or they die before Twenty-one, to raiſe Portions for Daughters; Proviſo, If they have Son who ſhall have Iſſue-Male, or attain Twenty-one, then the Term to ceaſe; and they have a Son who attains Twenty-one, and dies without Iſſue-male in the Father's Life, the Portions ſhall not be raiſed. *Worſley* v. *E. Granville*. *T.* 1751. 2 *Vezey* 331.]

[If a Father voluntarily ſettles 4000*l.* a-piece on his five Daughters, and by the ſame Deed binds himſelf in 25,000*l.* to ſecure the Surplus of his Eſtate above 20,000*l.* to his Daughters, this ſhall be looked on as a Bond to the Daughters, good againſt voluntary Claimants, but not againſt Creditors for valuable Conſideration. *Boughton* v. *Boughton*, *M.* 1739. 1 *Atkyns* 625].

[Tenant for Life ſhall not account for Rents and Profits towards raiſing Portions, but only keep down the Intereſt; the Portions ſhall be raiſed on the whole Eſtate. *Savile* v. *Savile*, *P.* 1740. 2 *Atkyns* 458.]

(3 Z. 5.) Reſtraint of Marriage.

(3 Z. 5.) When the Husband ſhall make a Settlement for the Portion.

If a Marriage be contrary to the Conſent of Parents, and the Huſband ſues for the Portion; the Court will not decree it, unleſs the Huſband makes a ſuitable Settlement. 2 *Sho.* 282.

[If Husband and Wife ſue for a Legacy given to the Wife, the Court will not compel the Payment, unleſs the Husband makes a Settlement on the Wife. *Brown* v. *Elton*, *M.* 1733. 3 *P. W.* 202.]

Or, if without the Privity of the Truſtees for the Wife; the Portion ſhall be veſted in Truſt for the Wife, and not decreed to the Huſband, till he makes a ſuitable Settlement. *R. Ch. R.* 146.

If the Wife has a Real Eſtate by Deſcent from her Brother, which was veſted in Truſtees in Truſt for her; and the Huſband ſues in *Chancery* for an Execution of the Truſt, or for other Favour; the Court will oblige the Huſband to do what is reaſonable. 1 *Ver.* 40.

[If on Marriage, Application is made to the Court to take care of Wife's Fortune, and Husband offers before the Maſter to ſettle an Eſtate in ſtrict Settlement, but before it is done, they having no Children, petition to have it paid to Huſband, the Court will not order it; for Nobody can conſent for the Children that may be. *Anon.* *T.* 1755. 2 *Vezey* 671.]

[If Money is left by a Father to Truſtees for the Benefit of his Children, to be equally divided between them; and one of them a Daughter, marries, being

ing under Age, and without Settlement; and her Husband, whilſt ſhe is under Age, and before the Truſtees have done any Act to ſettle or divide Father's Eſtate, aſſigns all the Share he is intitled to in Right of his Wife to a Creditor; the Court will not allow ſuch Creditor to receive the whole Fortune, without making ſome Proviſion for the Wife. *Jewſon* v. *Moulſon*, *M.* 1742. 2 *Atkyns* 417.]

[If a Father gives Bond to his Daughter, payable at Marriage, and depoſits it in a third Perſon's Hands, ſhe marries without Conſent, the Bond is delivered to Huſband, and he ſues on it; on a Bill brought by the Father, and bringing the Money into Court, the Court will order it to be ſettled on the Wife and her Children, and grant Injunction. *Winch* v. *Page*, *in Sc. M.* 1721. *Bunb.* 86.

[If a Man deviſes 1000*l.* to his Daughter payable at Twenty-one, or Marriage, and ſhe marries, and the Huſband and Wife join in a Suit in the Spiritual Court againſt the Truſtees and Executors for the Legacy, and the Executors bring Bill to compel the Huſband to ſettle the Legacy on the Wife, the Court will interfere, tho' the Huſband does not crave the Aſſiſtance of the Court, and is ſuing in a proper Court for the Recovery of it. *Harriſon* v. *Buckle*, *M.* 6 *G. Str.* 238. *Gardner* v. *Walker*, *H.* 8 *G. Str.* 503.]

[Tho' the Wife, of Age, appears, and is deſirous that her whole Fortune may be paid to her Husband, yet the Court will order Settlement of Part. *Ex parte Higham*, *T.* 1754. 2 *Vezey* 519.]

[Where there is a ſlender Proviſion made for a Wife, on an Acceſſion of Fortune to the Wife (if conſiderable, otherwiſe not) the Court will oblige the Husband to make further Proviſion. *March* v. *Head*, *T.* 1749. 3 *Atkyns* 720.]

(3 Z. 6.) When not.

But upon a Bill, by a Father againſt an Huſband, who married his Daughter without Conſent, to make a Settlement of the Land of the Wife, the Court will not compel him; for the Father has no Equity to demand it. *R. upon a Demurrer to ſuch Bill*, 1 *Ver.* 39.

So, if a Portion is given to a Daughter, and if ſhe marries without the Conſent of *A.* to another; if the Daughter will not marry, and gives Security to indemnify the Executor againſt the other Perſon, ſhe ſhall have the Portion for the Purchaſing of an Annuity. *R. Ch. R.* 62.

So, if the Huſband and Wife demand a Conveyance of Lands ſettled in Truſt for the Wife; the Truſtee ought to execute his Truſt, without requiring a Settlement by the Huſband. *R.* 2 *Ver.* 626.

So, if the Huſband prays that the Portion may be raiſed; the Court upon Circumſtances will allow Part to the Huſband, without a Settlement. 2 *Ver.* 762.

[If Money is charged in Truſt for Proviſion for a Daughter, and ſhe marries without Conſent, yet if ſhe appear and deſires the Whole may be paid to her Husband without any Proviſion, the Court will direct it, tho' the Husband is Inſolvent; for ſhe may diſpoſe of Perſonal Eſtate as ſhe might of Real by a Fine. *Willats* v. *Cay*, *M.* 1740. 2 *Atkyns* 67. *Contra ex Parte Higham ſupra* 3 Z. 5.

[If Husband has made a Settlement on his Wife on Marriage, and afterwards Money comes to her by Deviſe, the Court will not require the Husband (if a Man of Credit) to make a further Settlement at the Prayer of the Executor. *Adams* v. *Pierce*, *T.* 1724. 3 *P. W.* 11.]

[Or, if the Husband is a Freeman of *London*, and in a thriving Way. *Ibid.*]

(3 Z 7.) When the Wife ſhall loſe her Portion.

If a Man deviſes *that his Daughter ſhall have* 2000l. *Portion, but if ſhe marries before the Age of Sixteen, or without the Conſent of* A. *and* B. *ſhe ſhall have only* 1000l. If ſhe marries with the Conſent, *&c.* before Sixteen, ſhe ſhall have but 1000*l.* *R.* 2 *Vent.* 365. *R.* 2 *Ver.* 223. *Cont.* that ſhe ſhall have the 2000l.

If the Father by his Will deviſes 2000*l.* to his Daughter, and afterwards revokes the Legacy if ſhe marries *B.* and the Daughter marries *B.* the Legacy is loſt. *R.* 1 *Ver.* 20.

But if the Daughter has a Portion by a Settlement, the Father cannot annex a Condition to it, *that ſhe ſhall not marry without Conſent.* 2 *Ver.* 452.

If *A.* gives his Daughter 200l. *provided ſhe continues with his Executor till Twenty-one; but if ſhe ſhall be taken from the Executor by her Mother,* who was a Papiſt, *or marries againſt the Conſent of the Executor, then only* 10l. The Daughter being placed by the Executor with *B.* a Clergyman, with his Leave viſits her Mother, and there marries a Papiſt, without the Privity of *B.* or of the Executor, who upon Notice diſſents; the Daughter ſhall have only 10*l.* for the Qualification annexed to the Deviſe was in Nature of a Condition precedent; and the clandeſtine Marriage, which the Executor immediately diſapproved, was againſt his Conſent. *Cont. per Maſter of the Rolls, but per Cowper, Acc.* 2 *Ver.* 573.

[If a Man by Settlement after Marriage creates a Term in Truſt, to raiſe 2000*l.* a-piece for his Daughters, provided they marry with their Mother's Conſent, and a yearly Sum to be paid them till they marry, and if either of them die before Marriage with ſuch Conſent, her Portion to ceaſe, and the Premiſſes to be exonerated of it, or, if raiſed, to be paid to whom the Premiſſes ſhould belong, and by Will creates another Truſt-Term to raiſe 2000*l.* a-piece more for each of his Daughters, ſubject to the ſame Conditions, and by Codicil creates another Truſt-Term for the better raiſing them; if the Daughters marry without the Mother's Conſent (even after they are of full Age) they ſhall not have either of the Sums. *Per Hardwicke,* C. *Lee,* C. J. and *Willes,* C. J. reverſing a Decree of *Jekyll,* M. R. *Hervey* v. *Aſton, M.* 10 *G.* 2. *C. T. T.* 212. *P.* 13 *G.* 2. *Comyns' Rep.* 726.]

[If in Marriage-Settlement it is provided, that if any younger Child marries without Father's Conſent in his Life, or after his Death without Mother's Conſent, ſuch Child ſhall forfeit the intended Fortune, to be diſtributed among the Reſt at Twenty-one, or Marriage with Conſent, with further Proviſo, that if any ſuch Child marry without Conſent, or die before Twenty-one, or Marriage with Conſent, the Portion to be divided among the Survivors at Twenty-one, or Marriage with Conſent, and *A.* one of the Daughters marries without Conſent, ſhe forfeits the whole Intereſt under the Settlement, whether certain or contingent, and therefore, if another of them dies, ſhe is not intitled to her diſtributive Share of her Portion. *Wrotteſley* v. *Wrotteſley, T.* 1743. 2 *Atkyns* 584.]

[If Legacies are left payable at Twenty-one, or Marriage, which ſhall firſt happen, provided they marry with Conſent, otherwiſe to ſink into Teſtator's Perſonal Eſtate; the Legacies veſt at Twenty-one, and marrying without Conſent afterwards is of no Conſequence. *Pullen* v. *Ready, M.* 1743. 2 *Atkyns* 587.]

When a Condition, that a Perſon ſhall not marry without Conſent, is *in Terrorem, Vide Ante,* (2 Q. 6.)

(3 Z. 8.) When Marriage Brokage ſhall be avoided.

A Bond given for the Procurement of a Marriage between *A.* and *B.* ſhall not be allowed. *Decreed Cont.* if it be without Fraud, *but the Decree was reverſed in Parliament. R.* 3 *Lev.* 411. *Vide* 1 *Ver.* 412.

So, if upon the Marriage of a Son, the Portion is paid to his Mother; the Son ſhall be aided in Equity. 1 *Ver.* 451,

If a Woman borrows Money of her Brother, for the Augmentation of her Portion, and gives a Bond for it; the Bond or other Security ſhall be avoided in Equity as fraudulent. 1 *Ver.* 475. *Vide Poſt,* (4 D. 3.)

Tho' the Huſband dies without Iſſue, it ſhall be void againſt the Wife herſelf, or her Executor. *R.* 1 *Ver.* 475.

If a Mother, upon the Marriage of her Son, agrees to relinquiſh her Jointure, for which the Son privately agrees to make a Leaſe to the Mother of another Eſtate; this clandeſtine Agreement ſhall be diſallowed in Equity. *R.* 2 *Ver.* 466, 500.

[If

[If a Man on his Son's Marriage ſettles Part of his Lands on the Son in Poſſeſſion, and other Part on himſelf for Life, Remainder to the Son, with Power reſerved to the Father to make a Jointure of 200*l.* on Payment of 1000*l.* to the Son; and on the Father's ſubſequent Marriage, the Son (without Privity of his Wife, or her Relations,) releaſes the 1000*l.* and the Father, (without the Privity of his ſecond Wife, or her Relations,) gives a Bond for it; Equity will not ſet the Bond aſide. *Roberts* v. *Roberts*, *T.* 1730. 3 *P. W.* 66.]

So a Gratuity, given for the Procurement of a Marriage, ſhall be refunded. 2 *Ver.* 392.]

So a Leaſe, made by *A.* for procuring a Marriage between him and *B.* ſhall be avoided after his Death, by him in the Remainder. *R. in Parl.* 2 *Ver.* 446. *Pr. Ch.* 166.

So, if a Daughter has a Portion by a remote Relation, and the Father takes a Bond, before he will give his Conſent to her Marriage, that the Huſband ſhall repay Part, if his Wife ſhould die without Iſſue; for where the Portion does not come from the Father, he ſhall not lay any ſuch Reſtraint upon it. *R.* 2 *Ver.* 588.

So if, upon a Marriage, the Huſband gives a Bond, that he will releaſe to the Father all Demands, within two Years after the Marriage. *R.* 2 *Ver.* 652.

[If previous to Marriage of *A.* and *B.* then twenty Years old, Articles are entered into, firſt to ſecure 100*l.* *per Annum* to *C.* (*B.*'s Servant) out of *B.*'s Eſtate, then the Eſtate ſettled to the Uſe of *B.* and her Iſſue, (but theſe other Proviſions revokable by her after Marriage) and about the ſame Time *A.* gives *C.* a Bond for 1000*l.* which is afterwards given up to be cancelled, and a Recovery is ſuffered to the Uſes of the Articles, and a new Grant three Years after is made of the Annuity, which is paid by *A.* for ſome Time after *B.*'s Death, who afterwards brings Bill to be relieved againſt it as given for Marriage-Brokage, and *C.* inſiſts it was for her Service and Attendance; the Court will direct Iſſues to try whether the Bond was given in Conſideration of the Marriage, or for what other; whether it was made payable on the Marriage, or when, and whether the Annuity was *granted* in Conſideration of the Bond, or procuring the Marriage, or what other Conſideration, and if any other Conſideration, or Time, to be indorſed; if the Bond was given for the Marriage, and delivered up when the Annuity confirmed, it will be Marriage-Brokage; if the Annuity free from corrupt Management, and the Bond only given becauſe *B.* not then of Age, otherwiſe. *Cole* v. *Gibſon*, *T.* 1750. 1 *Vezey* 503.]

(3 Z. 9.) What ſhall be done if the Marriage is diſappointed.

If a Copyhold is ſurrendred to *B.* and *C.* who intend to be Huſband and Wife, for their Lives, and he dies before the Marriage, and ſhe enjoys it for thirty years; ſhe ſhall be decreed to ſurrender, and to account for the Profits. 1 *Ver.* 432.

[If *A.* an old Man, in Contemplation of a Marriage to his own Prejudice, and to the Benefit of *B.* to whom he is indebted 1050*l.* by Leaſe and Releaſe grants to Truſtees to the Uſe of *B.* for Life, then to Truſtees to preſerve contingent Remainders, then as to ſuch Lands, *&c.* as *B.* ſhall think proper, to Truſtees for the Life of ſuch Perſon as *B.* ſhall appoint in Truſt for ſuch Perſon, and for want of Appointment to *C.* for 500 Years, to raiſe Portions for *B.*'s younger Children, and then to the Uſe of the Heirs of the Body of *B.* and for want thereof, to ſuch Perſon, *&c.* as *B.* ſhould appoint, with Power to charge it with 1000*l.* and that *B.* may revoke Appointment, and make new, and for want of Appointment to *B.* and her Heirs; and *B.* afterwards appoints the Lands, *&c.* and the Reverſions expectant on her Death, if ſhe dies before her Marriage with *A.* to *A.* and his Heirs, he paying 700*l.* to, *&c.* and afterwards makes a new Appointment of the Premiſſes after her Death to *A.* for Life, then to the Heirs of their Bodies, then to *D*, *&c.*; *A.* dies, *B.* levies a Fine to herſelf and Heirs, many Years after Bill is filed by Heir at

at Law, *B.* pleads purchaſe, over-ruled, then ſuffers Recovery; the Heir at Law is barred of legal Right, nor is there Ground to give Relief in Equity, on Fraud, intended Marriage not taking Effect, or Miſtake, but if Heir at Law will try it at Law, the Court will remove the 500 Years Term. *Langley* v. *Brown*, *T.* 1741. 2 *Atkyns* 195.]

[If a Perſon who has made Addreſſes for ſome Time, and has reaſonable Expectation of Succeſs, makes Preſents, and the Lady deceives him afterwards, the Preſents or Value ſhall be returned; but if they are made by a Perſon to introduce himſelf, he is to be looked on as an Adventurer, eſpecially if their Fortunes are diſproportionate, and the Preſents or Value ſhall not be returned. *Robinſon* v. *Cumming*, *T.* 1742. 2 *Atkyns* 409.]

(3 Z. 10.) Or, the Portion is not all paid.

If by Marriage-Articles, in Conſideration of 3000*l.* Portion, *A.* is bound to ſettle 300*l.* *per Ann.* and afterwards it appears that 1000*l.* of the Portion was upon a prior Marriage agreed to be applied otherwiſe; the Huſband ſhall be decreed to anſwer this 1000*l.* being bound by the Covenant of the Wife *dum ſola*. *R.* 2 *Ver.* 448.

[If *A.* by Will makes his Son *B.* Tenant for Life without Waſte, with Power to make Jointure not exceeding 100*l.* *per Annum*, for every 1000*l.* Portion *received*; with further Power to ſettle Money on younger Children, and *B.* marries *C.* who has 10,000*l.* 2000*l.* whereof is ſettled to continue at Intereſt to increaſe the Portions of younger Children as *B.* and *C.* ſhall appoint, or in Default, equally, if any, if none, to the Survivor of *B.* and *C.* in the mean Time, the Intereſt to *B.* for Life; this ſhall be conſidered as a Portion of 10,000*l.* received by *B.* and he may ſettle accordingly. *E. Tyrconnel* v. *D. Ancaſter*, *T.* 1754. 2 *Vezey* 499.]

(3 Z. 11.) When a Marriage-Settlement ſhall purſue the Articles ſtrictly.

[If Articles are entered into before Marriage, and Settlement after Marriage differs from them, the Court will ſet up the Articles againſt the Settlement. *Legg* v. *Goldwire*, *M.* 10 *G.* 2. *C. T. T.* 20.]

[But if both Articles and Settlement are previous to the Marriage, the Settlement ſhall controul the Articles. *Ibid.*]

[Except the Settlement is expreſſly ſaid to be in purſuance and Performance of the Articles. *Weſt* v. *Eriſey*, *M.* 13 *G.* *Ibid.*]

If Marriage-Articles are executed, the Settlement ought to be made ſtrictly purſuant to the Articles; and Equity will decree accordingly.

And therefore, if the Articles are, that the Settlement ſhall be *to the Huſband and Wife for Life, Remainder to the Heirs of their Bodies*; the Court will decree an Eſtate-Tail to the Son. *Eq. Ca.* 130, 165 *.

And if the Huſband, without the Conſent of the Truſtees, or of the Son, then being of full Age, deviſes the Eſtate to the eldeſt Son for Life, Remainder to his firſt and other Sons in Tail Male; the Deviſe not being purſuant to the Articles ſhall be avoided. *R. Eq. Ca.* 130. *

So, if a Bill is brought for Execution of the Articles, the Court will direct a ſtrict Settlement. *Eq. Ca.* 131. * *R. F. g.* 38.

* 2d Part of 2 *Mod. Ca.*

As, if the Articles are for a Settlement, *within two Years, to the Uſe of* B. *for Life, Remainder to the Heirs of his Body*, and if not made, to ſtand ſeiſed to the ſame Uſes; the Court will direct a ſtrict Settlement. *R.* 1 *P. W.* 622.

[If by Articles previous to Marriage of *A.* with *B.* *A.* covenants with *B.*'s Father, to ſettle Lands to *A.* for Life, *B.* for Life, and then to the Iſſue of this Match, in ſuch Sort, Manner and Form, and ſubject to ſuch Charges for younger Children as *A.* ſhall appoint; and it is agreed, that all further Covenants for aſſuring the Premiſſes to the ſaid Uſes, or others to be agreed on by all the Parties, ſhall be contained in the Settlement; if there is a Daughter

an only Child of the Marriage, ſhe ſhall have all the Land as Tenant in Tail, and the Son of a ſecond Marriage ſhall convey to her. *Hart* v. *Middlehurſt*, T. 1746. 3 *Atkyns* 371.]

(3 Z. 12.) When it ſhall purſue the Intent of the Articles.

But where by Articles it is agreed, that the Settlement ſhall be *to the Huſband and Wife for Life, Remainder to their Iſſues of their Bodies*; if the Father afterwards, with the Conſent of the Truſtees, makes a Settlement *upon his Son for Life, and to his Wife for Life, Remainder to preſerve contingent Eſtates, Remainder to the firſt and other Children of that Marriage in Tail*; the Court will not avoid it. *R. Eq. Ca.* 130, 132.*

* 2d Part of 2 *Mod. Ca.*

So, if the Father makes a Settlement *upon the Son for Life, with Power to make a Jointure upon another Wife, of* 600l. *per Ann. Remainder ut ſupra*; the Son cannot make a larger Jointure, tho' he had an Eſtate-Tail by the Articles. *Eq. Ca.* 131.*

So, if the Father makes a Settlement purſuant to Articles, tho' it varies from a ſtrict Settlement, and gives an Eſtate in Tail General to the Wife, upon Default of Iſſue Male; the Court will not avoid it. *R. Eq. Ca.* 131.*.

[If Part of an Eſtate is limited to Huſband for Life, Remainder to Wife for Life, and after Death of Survivor to Heirs of the Body of Wife by Husband, and other Part to Huſband for Life, Remainder to Heirs of his Body, Remainder to Wife; the Whole ſhall not be decreed in ſtrict Settlement, for it appears that Part was intended to be left in the Power of the Father, other Part not in his Power alone. *Howel* v. *Howel*, T. 1751. 2 *Vezey* 358.]

(4 A.) Mortgage.

(4 A. 1.) The Nature of it.

A Mortgage is but a Pledge, or Security for Money in its Nature. *Co. Lit.* 205. *Ca. Ch.* 285. *Eq. Abr.* 311.

And ſhall be taken as Part of the Perſonal Eſtate. *Ca. Ch.* 285.

A Mortgage is redeemable in its Nature; and therefore, a Covenant that it ſhall not be redeemed, is void. 2 *Vent.* 364, 5. 2 *Ca. Ch.* 61.

And 'till Redemption, the Eſtate is in the Mortgagee, by Law and Equity. 2 *Ca. Ch.* 97.

So a Covenant, that it ſhall not be redeemed after the Death of the Mortgagor, *&c.* is void, and it ſhall be always redeemable. 2 *Ca. Ch.* 61.

So, if the Agreement be, that *A.* or his Heirs Male may redeem; the Heir General, or Aſſignee may redeem. *R.* 2 *Ca. Ch.* 148. 1 *Ver.* 33, 190.

But by the St. 4 & 5 *W. & M.* 16. If any mortgage Land for a valuable Conſideration, and give not Notice in Writing under Hand, before executing it, of a former Mortgage on All or Part of the ſame Land, ſuch ſecond Mortgagee ſhall hold as an abſolute Purchaſer, freed from Equity of Redemption, in reſpect to the Mortgagor, his Heirs, Executors, Adminiſtrators or Aſſigns.

So, if he give not ſuch Notice of a former Judgment, Statute, or Recognizance, given for Security of Money or like valuable Conſideration, unleſs, on Notice thereof, under Hand and Seal of Mortgagee atteſted by two Witneſſes, the Mortgagor diſcharge ſuch former Incumbrance in ſix Months after.

(4 A. 2.) What ſhall be ſaid to be a Mortgage.

If a Man upon Marriage agrees to make a Settlement *for a Jointure, and to the Intent that the Land be diſcharged of* 900l. *after the Death of the Jointreſs to* A. *and his Heirs, upon Truſt for the Huſband and his Heirs, if he pays the* 900l. *within three Years, but if he does not pay it, or dies, in Truſt for the Wife and her Heirs for Diſcharge of the Debt and her greater Advancement*; this is a Mortgage, for artificial Words do not alter the Nature of it. *R.* 2 *Ca. Ch.* 34.

So,

So, if a Man makes a Mortgage, and by the ſame Deed covenants that it ſhall not be redeemed but during his Life; yet it is a Mortgage, and ſhall be always redeemable, as well after his Death as before. 2 *Ca. Ch.* 61.

So, if the Condition is, that he or the Heirs Male of his Body may redeem. *R.* 1 *Ver.* 33, 190. 2 *Ca. Ch.* 148.

So, if upon a Bill for Foreclоſure againſt the Mortgagor and his Creditors, one Creditor redeems by the Conſent of the others, and the Mortgage is aſſigned to him, whereupon he agrees, that if the other Creditors pay him his Debt before ſuch a Day, they may redeem; this gives them a new Equity of Redemption, and they may redeem twenty Years afterwards. *R.* 1 *Ver.* 138.

If a Man makes a conditional Surrender of a Copyhold, *to be void on Payment of* 200l. *at ſuch a Day, and if he does not pay it, that on Payment of ſuch other Sum the Mortgagee ſhall be a Purchaſer*; the Surrenderer dies before the Day of Payment, and the 200*l.* not being paid, the Surrenderee pays the other Sum to his Adminiſtrator: It continues a Mortgage, and the Surrenderer or his Heir ſhall redeem on Payment of the whole Principal and Intereſt. 1 *Ver.* 488.

If *A.* for 300*l.* grants 60*l. per Ann.* for ſeven Years, it ſhall be redeemed on Payment of the Principal and Arrears. *Dub.* 2 *Ver.* 288.

[If *A.* intitled to an Annuity, on Perſonal Security, of 200*l.* being a Priſoner, by Indenture ſells to *B.* 150*l. per Ann.* part of ſaid Annuity, for 1050*l.* with Proviſo, that if *A.* deſires at any Time to purchaſe back ſaid 150*l.* on ſix Months Notice, *B.* on Payment of ſaid 1050*l.* (all Arrears of Annuity being paid) ſhall re-aſſign, and there is an Indorſement, that if *A.* ſhould repurchaſe or *redeem*, he ſhall pay 75*l.* more; this is only a Loan of Money. *Lawley* v. *Hooper*, *M.* 1745. 3 *Atkyns* 278.]

If a Conveyance be of 200*l. per Ann.* for 250*l.* to the Father, who afterwards exhibits a Bill for Foreclоſure, but does not proceed further; it ſhall be taken for a Mortgage, tho' there were long Leaſes, and no Redemption for twenty-ſeven Years. *R.* 1 *Ch. R.* 222.

If a Conveyance be abſolute, but the Vendee agrees by Writing under Hand and Seal to accept his Money within a Year, it ſhall be redeemable. *R.* 2 *Ver.* 84.

(+ A. 3.) What not.

But an abſolute Conveyance ſhall not be deemed a Mortgage, tho' it be made for an Under-value, if it does not appear to be ſo intended at the Time of the making, by Condition in the ſame, or by other Writing, *&c.* *D. Ca. Ch.* 2.

[Nor becauſe there is an incongrous Covenant in the Deed; as, that the Vendor ſhould not do ſo and ſo with the Eſtate, eſpecially if there has been long Acquieſcence in the Grantee's Poſſeſſion *Cotterel* v. *Purchaſe*, *H.* 8 *G.* 2. *C. T. T.* 61.]

Tho' the Purchaſer afterwards declare, *that he will take his Money given for the Conſideration of the Conveyance, at any Time, with Damages for it*, or the like Words: For if it be not a Mortgage *in Principio*, it ſhall not be made ſo by *Parol* Agreement afterwards. *Ca. Ch.* 2. *R.* 1 *Ver.* 268.

So, it ſhall not be deemed a Mortgage, if there be not a mutual Remedy, for the Mortgagor to have a Redemption, and for the Mortgagee to inforce the Payment of his Money. *D. Ca. Ch.* 2. *Vide* 1 *Ver.* 395.

As, if a Man, in Conſideration of 1000*l.* paid to him by another, who had married his Couſin, conveys Land to him and his Heirs, with a Proviſo, *that if he pays the Principal and Intereſt during his Life, the other ſhall re-convey, and if he does not pay, that his Heirs ſhall not redeem:* It is not a Mortgage; for it was intended as a Settlement, and the Mortgagee could not foreclоſe during the Mortgagor's Life. *R.* 2 *Vent.* 365. 2 *Ca. Ch.* 60. 1 *Ver.* 8, 215, 232.

So, if Mortgage be for 500*l.* and Mortgagor covenants to pay 700*l. to his Wife after his Death*, and afterwards deviſes the Lands to his Wife, *if the*

700*l.*

700l. *is not paid at the Time, ſhe paying the Mortgage*; if the 700*l.* is not paid, the Land ſhall not be afterwards redeemable on Payment of the 700*l.* and 500*l.* with Intereſt. *Semb. per Hale, Hard.* 511.

If *A.* deviſe Lands to *B. upon Condition that he pay* 500l. *to his Daughter, within ſix Months after, otherwiſe, to the Daughter and her Heirs*; it ſhall not be conſtrued a Mortgage, but the Daughter ſhall take by the Limitation, if the 500*l.* be not paid. *R.* 1 *Ver.* 402, 430.

Yet, where a Settlement is made on Daughters and their Heirs, *until he in Remainder pay* 300l. *to the Daughters*; it ſhall be in the Nature of a Security for the Money, and the other Incumbrancers, as well as he in Remainder, ſhall redeem, and the Daughters account for the Rents and Profits, but not ſink the Principal (annually as in the Caſe of a common Mortgage) till one Third of the Portion be raiſed. *R.* 2 *Ver.* 523, 577.

[Law and Equity will make a ſtrong Preſumption in favour of Twenty-one Years uninterrupted Poſſeſſion, tho' Circumſtances ſeem to ſhew that the Inheritance was not intended to be conveyed. *Cooke* v. *Cooke*, *M.* 1740. 2 *Atk.* 67.]

(4 A. 4.) Who may redeem.

Altho' a Mortgage be forfeited, it may be afterwards redeemed in *Chancery*, on Payment of Principal, Intereſt, and Charges.

An Equity of Redemption is an inherent Right to the Land, which binds thoſe, who come to it in the *Poſt*, or otherwiſe. *Hard.* 469.

Tho' it be the King himſelf. *Semb. Hard.* 469.

And the Heir, or Executor may redeem. 1 *Ch. R.* 186. ſays, the Heir ſhall redeem, and not the Executor.

If the Executor has Aſſets, the Heir may compel him to redeem for his Benefit. *Per Hale, Hard.* 512.

If an Annuity be granted out of Land, with a Proviſo for Redemption, it may be redeemed. 1 *Ver.* 209.

He, who comes in by a voluntary Conveyance, may redeem. 1 *Ver.* 193. *Eq. Abr.* 315.

If Land be deviſed by the Mortgagor, the Deviſee ſhall redeem, and not the Heir. 1 *Ch. R.* 191.

If a Mortgage be made before Marriage, and afterwards the ſame Land is ſettled upon the Wife for a Jointure, the Wife may redeem, and after her Death the Executors of the Wife ſhall hold the Land, till the Mortgage, allowing a third Part, is ſatisfied by the Perception of the Profits, or Redemption. *Ca. Ch.* 271. *R. Ch. R.* 475. 1 *Ch. R.* 220. *Eq. Ab.* 219, 222.

So, if Articles are made for a Marriage-Settlement, and afterwards the Land is mortgaged to a Man, who has no Notice of the Articles, the Wife ſhall redeem, *&c.* *R.* 2 *Vent.* 343.

[If by Articles and by Settlement, both previous to Marriage, Lands are ſettled on *A.* for Life, then *B.* for Life, and then to the Heirs-male of *A.* on *B.* begotten, and *A.* ſuffers Recovery, and mortgages to *C.* whoſe Repreſentative with *A.* convey their Intereſt and the Equity of Redemption to *D.* and one Perſon was concerned for all Parties in the Mortgage and Aſſignment; the Court will not ſet aſide the Mortgage, *A.* having been Tenant in Tail, but will give his Son leave to redeem. *D. Warrick* v. *Warrick*, *H.* 1745. 3 *Atkyns* 291.]

So, if a Settlement be made after a Mortgage, a remote Remainder-man, to whom the Settlement was voluntary, ſhall have the Equity of Redemption. *Semb. Ca. Ch.* 220.

So a Man, intitled by Settlement, ſhall redeem, and not the Heir-General, tho' he prays it. 1 *Ver.* 182.

If *A.* and his Wife mortgage the Eſtate of the Wife, and the Huſband covenants to pay, and afterwards does pay, but takes an Aſſignment to himſelf; it ſhall be decreed to the Heir of the Wife. *R. in Parl.* 2 *Ver.* 438.

If a Mortgagee purchaſes the Reverſion, the Heir ſhall not be ſuffered to try the Title at Law, before he will declare whether he will redeem. 1 *Ch. R.* 169.

If a Man makes a Mortgage, or acknowledges a Statute, and afterwards gives a Judgment or Mortgage to another, the ſecond Perſon ſhall redeem the firſt Incumbrance. *Semb. Ca. Ch.* 36. *Cont.* 1 *Mod.* 115. *Acc. Ch. R.* 52. 2 *Ver.* 663.

But the Conizee of a Judgment ſhall not be aided againſt a Purchaſer in Equity, unleſs he had expreſs Notice of the Judgment before his Purchaſe. *R. Ca. Ch.* 37.

Nor, if he had the Conizor of the Judgment in Execution. *Semb. Cont. Ca. Ch.* 37.

[If the Inheritance of Land mortgaged for a Term be conveyed by a *defezable but equitable* Title, and afterwards conveyed to another by a *legal and equitable* Title, the Latter ſhall have the Equity of Redemption. *Hagſhaw* v. *Yates*, *M.* 6 *G. Str.* 240.]

[If *A.* obtains Judgment againſt *B.* on a Promiſe of Marriage, and before Execution *B.* mortgages his whole Effects, and goes Abroad; *A.* ſhall be allowed to redeem. *King* v. *Mariſhal*, *M.* 1744. 3 *Atkyns* 192.]

[A Judgment-creditor muſt take out Execution before he is intitled to redeem. *Sbirley* v. *Watts*, *M.* 1744. 3 *Atkyns* 200.]

[If there is only an Equity of Redemption in a legal Eſtate in a Debtor, (the legal Eſtate being in a Mortagee) a Plaintiff at Law, who has lodged an *Elegit* or *Fieri Facias* with the Sheriff, may come into Equity to redeem a ſubſequent Incumbrancer, and for Diſcovery of the Conſideration of the Aſſignment. *Burdon* v. *Kennedy*, *T.* 1757. 3 *Atkyns* 739.]

So a Creditor by Judgment ſhall be preferred in the Redemption to a Creditor by Statute. *R.* 1 *Ver.* 293, 4.

If a Man makes a voluntary Conveyance, and afterwards mortgages the Land; tho' the Conveyance is fraudulent and void as to the Mortgagee, yet it is ſufficient to give the Equity of Redemption. *R. Ca. Ch.* 59.

If a Mortgagor becomes Bankrupt, the Aſſignee of the Commiſſioners of Bankrupt ſhall have the Equity of Redemption. *Dub. Ca. Ch.* 71. *Adm.* 2 *Ver.* 156.

[If *A.* confeſſes a Judgemnt, which is not to take place till after the Death of a Perſon, and during his Life the mortgaged Eſtate deſcends from *A.* to his Heir, who mortgages it to *B.* who has no Notice of the Judgment, the Heir becomes Bankrupt before the Death of the Perſon, *B.* is appointed Aſſignee; the Repreſentative of the Judgment-creditor ſhall redeem, and not the Aſſignee. *Stonebewer* v. *Thompſon*, *M.* 1742. 2 *Atkyns* 440.]

If an Adminiſtrator makes a Mortgage of a Term, which he has as Adminiſtrator, his Executor ſhall redeem, and not the Adminiſtrator *de bonis non*, *&c. Ca. Ch.* 224.

If Land be ſettled upon the Wife for a Jointure, and afterwards the Huſband and Wife join in a Mortgage, and the Huſband dies, the Wife may redeem, paying a third Part, and the Heir two Parts of the Principal Money; and if the Wife pays more than a third Part, her Executor ſhall hold the Land till the Reſidue is ſatisfied. *R.* 2 *Ca. Ch.* 100. But there the Money borrowed was to rebuild the Tenements ſettled; and there was a *parol* Agreement that ſhe ſhould redeem.

So the Wife may redeem, if the Redemption be limited by the Huſband alone to him and his Heirs. 1 *Ver.* 213.

So the Heir, or Aſſignee may redeem, tho' the Redemption be limited only for his Life, or to the Heir Male, *&c.* *Vide Ante*, (4 A. 1.)

(4 A. 5.) At what Time.

No certain Time is limited for the Redemption of a Mortgage. *Ca. Ch.* 102. *Eq. Ab.* 313.

But after twenty Years (which by the Statute of Limitations, is allowed for Entry) *Chancery* will not admit a Mortgagor to redeem, without ſpecial Cauſe. *Semb.* 20 *Car.* 2. *Ca. Ch.* 102. *R.* 22 *Car.* 2. 2 *Vent.* 340. *Semb.* 23 *Car.* 2.

Ca. Ch. 220. 1 *Ch. R.* 128, 206. *Eq. Ca.* 185. *Eq. Abr.* 315. *Jenner* v. *Tracy, P.* 1731. *Belch* v. *Harvey, M.* 1736. 3 *P. W.* 288.

And if a Bill be for Redemption after, the Defendant ſhall plead, or demur to it. *Ca. Ch.* 102. 1 *Ch. R.* 184. *Jenner* v. *Tracy, P.* 1731. *Belch* v. *Harvey, M.* 1736. 3 *P. W.* 288.

Yet Redemption of a Mortgage after twenty Years is allowed in Caſe of Infancy, or Coverture, *&c.* which are excepted by the Statute. 2 *Vent.* 340. 1 *Ch. R.* 193, 4. *Jenner* v. *Tracy, P.* 1731. *Belch* v. *Harvey, M.* 1736. 3. *P. W.* 288.

[After the Diſability removed, ten Years ſhould be the Rule in Equity, as it is in the Proviſo in the Statute of Limitations. *Per Talbot, C. Jenner* v. *Tracy, P.* 1731. *Belch* v. *Harvey, M.* 1736. 3 *P. W.* 288.]

[After Twenty-five Years Poſſeſſion, the Court will order a Redemption on Defendant's Conſent, but not otherwiſe. *Procter* v. *Oates, H.* 1740. 2 *Atk.* 140.]

[Coverture is no Excuſe for not redeeming a Mortgage, for if a Woman becomes afterwards diſcovert the Statute of Limitations will run from that Time; ; even tho' ſhe marries again, it will run after the ſecond Marriage. *Anon. T.* 1742. 2 *Atkyns* 333.]

[Nor Tenancy by the Curteſy; for it is of no Conſequence to the Mortgagee who has the Equity of Redemption, if they do not make uſe of it they ſhall be barred. *Ibid.*]

[But if ſeventeen Years after the Mortgage, and twelve Years before filing the Bill to redeem, the Mortgagor's Agent ſettles an Account in order to pay off the Mortgage, it will ſave the Redemption. *Ibid.*]

So Redemption ſhall be allowed, before the Day for Payment fixed at many Years Diſtance. 1 *Ver.* 184, 394.

So, Redemption of an Eſtate, extended upon a Judgment by *Elegit*, is allowed at any Time, tho' a prior Bill for Redemption is diſmiſſed. 1 *Ver.* 397, 8. 468.

[If *A.* and his Wife, by Leaſe and Releaſe and Fine, convey two Meſſuages to *B.* and his Heirs, till he ſhall receive by the Rents 50 *l.* and Intereſt, and then to the Uſe of *A.* for Life, Remainder to the Wife for Life, *&c.*; there never can be a Forfeiture, and no Bar ariſes from Length of Time, the Mortgagee being only in the Nature of Tenant by *Elegit*. *Yates* v. *Hambly, T.* 1742. 2 *Atkyns* 360.]

Allowed upon a Mortgage after a Poſſeſſion for ſixty Years, where the Mortgagor agreed that the Mortgagee ſhould hold till he was ſatisfied. 1 *Ver.* 418. *Eq. Abr.* 314.

After forty Years and three or four Deſcents, where there was Infancy or Coverture for the greateſt Part of the Time, and an Account with the Mortgagee, and Bill for Foreclоſure. 2 *Ver.* 377. *Eq. Abr.* 314.

So Redemption was allowed, after a Fine by the Mortgagee, and Non-claim. 1 *Ver.* 132.

So, after a Foreclоſure againſt the Mortgagor, upon a prior Mortgage and a Purchaſe ſince the Decree. *R. Ch. R.* 408.

So Redemption was allowed, after Releaſe of the Equity, where the Eſtate was of greater Value, and therefore probable, that the Releaſe was upon other Truſts, which did not then appear. *Ca. Ch.* 107.

But after the Equity foreclоſed againſt the Mortgagor, a remote Remainderman ſhall not redeem an antient Mortgage, tho' no Party to the Decree of Foreclоſure. *R. Ca. Ch.* 220.

So, after a Mortgage, *&c.* for many Years, no Redemption ſhall be againſt a Purchaſer, and a Poſſeſſion for thirty Years. 1 *Ch. R.* 144, 5.

[If *A.* agrees with *B.* for the Purchaſe of certain Meſſuages, and *A.* deſires *C.* to advance the Purchaſe-money, the Premiſſes to be conveyed to *C.* but redeemable by *A.* on paying *C.* Principal and Intereſt, and *C.* pays the Money, has the Conveyance, and continues in Poſſeſſion for upwards of thirty Years without an Account being demanded, *C.* is intitled to an abſolute Eſtate. *Yates* v. *Hambly, T.* 1742. 2 *Atkyns* 360.]

So,

So, where ſixty Years were elapſed, and tho' a Redemption was attempted at the End of thirty Years, there was Acquieſcence for thirty Years after, no Redemption was allowed. 2 *Ver.* 418. *Eq. Abr.* 314.

[If a Leaſe for ſixty Years is granted as a collateral Security for Money ſecured by a Recognizance alſo; at the Expiration of the Term the Inheritance ſhall be reconveyed, on Payment of what is due. *Toomes* v. *Canſet*, *M.* 1745. 3 *Atkyns* 261.]

[The Aſſignee of the Equity of Redemption, tho' for a very ſmall Conſideration, ſhall redeem, if the Bill is brought to redeem within fifteen Years of the Time when it appeared plainly to be a Mortgage; but he ſhall be confined only to ſurcharge and falſify, and Intereſt ſhall be allowed at five *per Cent.* *Anon. P.* 1746. 3 *Atkyns* 313.]

[If *A.* conveys Lands to *B.* and there is an Agreement by ſeparate Articles, that on *A.*'s repaying the Money advanced, and 50 *l.* for Improvements that *B.* might make, *B.* ſhall reconvey; *A.*'s Son may redeem twelve Years afterwards, in one Year after coming of Age. *Baker* v. *Wind*, *M.* 1748. 1 *Vezey* 160.]

(4 A. 6.) Upon what Terms one may redeem.

[If Oppreſſion appears in the Mortgagee, the Court will direct in the Decree every Thing to be taken moſt ſtrongly againſt him. *Mitford* v. *Featherſtonhaugh*, *T.* 1752. 2 *Vezey* 445.]

If a Mortgagor redeems, he ought to pay Principal, Intereſt and Coſts.

If Huſband and Wife, in Right of Wife, by Fine make a Mortgage for 300 *l.* and 200 *l.* Part thereof is afterwards repaid, and then the Huſband borrows of the Mortgagee more Money, which is indorſed upon the Mortgage; tho' no other Fine was levied, yet the Heir ſhall not redeem without Payment of the Whole; for the Mortgagee has a Right in Law, and has Equity for all the Money. *R.* 2 *Ca. Ch.* 98. *Vide Prior Incumbrance, Poſt*, (4 A. 10.)

If a Man in Remainder after an Eſtate for Life redeems a Mortgage, he ſhall pay only Two-thirds. 1 *Ver.* 404. *Ca. Ch.* 271.—Tenant for Life ſhall pay Two-fifths, and he in Remainder Three-fifths. 2 *Ver.* 267.

But if he in Remainder does not pray a Redemption till the Life determines, he ſhall pay the Whole, having Intereſt abated during the Life. *R.* 1 *Ver.* 404.

If he, who has an Equity of Redemption only for Life, will redeem, the Mortgagee ought to exhibit a Croſs Bill, That the Land may be ſold, and after Payment of the Mortgage, *&c.* the Surplus be divided amongſt the Tenant for Life and them in Remainder. 2 *Ver.* 117.

If a Mortgagee enters upon Forfeiture of the Mortgage, he ſhall be allowed upon his Account, when the Mortgagor redeems, Intereſt for the Intereſt due at his Entry. *D. Ca. Ch.* 258.

So, if an Account be ſtated between the Mortgagor and Mortgagee, Intereſt ſhall be allowed for the Whole due upon the Account. *Ch. R.* 409. *Dub.* 2 *Ver.* 392.

So an Aſſignee of a Mortgage ſhall be allowed Intereſt for all Intereſt due at the Time of the Aſſignment. *R. Ca. Ch.* 68, 258. *Dub.* 1 *Ver.* 169. *Vide Ante*, (3 S. 3, 4.)

So, if the annual Rent does not ſatisfy the Intereſt, the Mortgagee ſhall be allowed Intereſt for the Reſidue of the Intereſt covenanted to be paid; for he might have recovered Damages at Law for the Non-payment. 1 *Ver.* 194.

So, he ſhall be allowed all Coſts expended at Law in defending his Mortgage againſt an Intail. *R.* 2 *Ver.* 536.

A Mortgagee ſhall be charged only for Profits received by him, not for Profits which he might have received. *Ca. Ch.* 258. *Vide Ante*, (2 A. 5, 6.)

A Mortgagee ſhall account for all Profits by him received, tho' he had Poſſeſſion by Agreement from the Time of the Mortgage, and ſhall not ſet the Profits in Balance againſt the Intereſt. 1 *Ver.* 477.

Shall not have the Benefit of a Collateral Agreement to ſell him ſo much of the Land for ſuch a Price; for he can require his Principal and Intereſt only. 2 *Ver.* 520.

[The Court will not allow a Mortgagee more than Principal and Intereſt, tho' there was a private Agreement that he ſhould have an Allowance for receiving the Rents. *French* v. *Baron*, *H.* 1740: 2 *Atkyns* 120.]

If a Mortgagee commits Waſte, pending the Account upon a Bill for Redemption, the Court upon *Affidavit* and Motion will direct the Defendant to deliver Poſſeſſion to the Plaintiff immediately, tho' he be a Pauper, upon Security to pay the Whole due upon the Account, when determined. 2 *Ver.* 392.

If an Advowſon be Appendant to a Manor in Mortgage, and upon Avoidance the Mortgagee preſents, an Injunction ſhall be granted to ſtay his Proceeding, if the Mortgagor tenders Payment of Principal, Intereſt and Coſts. 2 *Ver.* 401.

Tho' the Mortgagee has a Bill to foreclоſe, and the Mortgagor no Bill to redeem; for until Decree of Foreclоſure, the Mortgagee is but a Truſtee for the Mortgagor, as to the Advowſon. *R.* 2 *Ver.* 401, 550.

If the Mortgage was of an Eſtate in Fee and for Life, the Mortgagee ſhall account for all Profits received during the Life, tho' he lives for many Years, and not only for the Value of the Eſtate to be ſold; tho' the Fee is not ſufficient for the Money due at his Entry, and tho' the Redemption was not within twenty Years. *R. Cont. but that reverſed in Parl. Ca. Ch.* 109.

If a Mortgagee has Judgment in Ejectment, and afterwards refuſes to take Execution, he ſhall anſwer for the Profits, as in the Caſe of a voluntary Default. 1 *Ver.* 258.

So, if the Mortgagor becomes Bankrupt, and the Mortgagee, to prevent the Aſſignees getting Poſſeſſion on an Ejectment by them, aſſiſts the Mortgagor with his Mortgage, to detain the Poſſeſſion, and yet does not enter; he ſhall anſwer for the Profits from the Delivery of the Declaration in Ejectment. *R.* 1 *Ver.* 267.

So, if the Mortgagee, after Judgment in Ejectment and Poſſeſſion, permits the Mortgagor to take the Profits to the Prejudice of other Incumbrancers, who would redeem him, he ſhall be charged with the Profits from the Time of his Entry. 1 *Ver.* 270.

If a Mortgagee covenants to make a Leaſe for four Years, and then the Mortgagor redeems, he ſhall not be ſubject to the Leaſe, unleſs where there was a Neceſſity for a Leaſe; for no Incumbrance by the Mortgagee binds the Mortgagor. *R. Mod. Ca. in Eq.* 1. *

* 2d Part of 2 *Mod. Ca.*

[The Mortgagee of an Eſtate for Lives may renew them as they fall in, tho' he cannot compel the Mortgagor to do it,) and it ſhall be added to the Mortgage-money. *Lucam* v. *Mertins*, *M.* 17 *G.* 2. *Wilſ.* 34.]

So, a Mortgagee ſhall not have the Benefit of a Covenant for Pre-emption, where he has both Parts of the Indenture in his Hands, and does not give Notice, or make Claim of the Covenant, before a Contract for Sale. *Mod. Ca. in Eq.* 2. *

[A Mortgagee in Poſſeſſion ſhall not be obliged to quit the Eſtate to a Purchaſer, till he pays him Principal, Intereſt, and Coſts. *Davy* v. *Barker*, *P.* 1737. 2 *Atkyns* 2.]

If the Purchaſer of an Equity of Redemption upon an old Extent will redeem againſt *A.* who hath purchaſed the extended Intereſt; *A.* ſhall account for the Profits from the Time of his Purchaſe only, and the Profits before ſhall be balanced againſt the Intereſt. 2 *Ch. R.* 392.

[If *A.* a Mortgagee brings Bill to redeem againſt *B.* a Judgment-creditor who has one puny and two prior Judgments, which he has taken an Aſſignment of, in the ſame Eſtate, by Deſire of the Mortgagee, and on a Decree for Sale, *B.* had been reported beſt Purchaſer; *A.* ſhall pay him Intereſt for the accumulated Sum paid for the Judgments, 5 *l. per Cent.* on the Principal, and 4 *l. per Cent.* on the Intereſt, and *B.* ſhall account for the Profits received on the three Judgments. *Aſhenhurſt* v. *James*, *H.* 1745. 3 *Atkyns* 270.]

If

If *A.* exhibits a Bill to redeem a Mortgage, he ſhall not incumber the Account with the Breach of collateral Covenants, in the Leaſe of a Colliery. 2 *Ver.* 462, 520.

When a Man ſhall not redeem one Mortgage, without redeeming another Security, *Vide Poſt*, (4 A. 10.)

[A Mortgagor may redeem without paying off a Bond-debt; but the Heir at Law muſt, becauſe the Eſtate becomes Aſſets. *Morret* v. *Palke*, *T.* 1740. 2 *Atkyns* 52.]

If the Mortgagor tenders the Money at the Day, the Mortgagee ſhall not have Intereſt for it from the Time of the Tender and Refuſal, upon *Affidavit* that he had not made any Benefit of it. 2 *Ca. Ch.* 206.

[If there are Covenants on the Part of the Mortgagee in the Re-Aſſignment, he may refuſe to take the Principal and Intereſt tendered, till he can adviſe whether he can ſafely execute; therefore the Deed ſhould be left with him, and a Time appointed to pay after he may have adviſed. *Wiltſhire* v. *Smith*, *P.* 1744. 3 *Atkyns* 89.]

So, after Forfeiture of a Mortgage, if the Mortgagee upon Diſcourſe refuſes Acceptance, and afterwards the Mortgagor makes a Tender at his Houſe; tho' the Mortgagee was not preſent at the Tender. *R. Ca. Ch.* 29.

So, generally, he ſhall not have Intereſt upon Intereſt. 1 *Ver.* 194. *Vide Ante*, (3 S. 3, 4, 5.) *Vide ſupra.*

If *A.* mortgages a Houſe, which by Accident becomes deficient to ſatisfy the Money, and afterwards is a Bankrupt; the Houſe ſhall be ſold, and the Mortgagee ſhall come in as a Creditor for the Money not ſatisfied. *Eq. Abr.* 312.

If the Mortgagee has deviſed the Lands to *A.* for Life, and afterwards to *B.* in Fee, *B.* ſhall have a Proportion of the Money, if the Mortgage is redeemed. 1 *Ver.* 70. *Vide Ante*, (3 V. 6.)

And the uſual Proportion is, one Third to the Tenant for Life, and two Thirds to him in Fee. 1 *Ver.* 70.

[If a Man deviſes his Eſtate, already mortgaged to *A.* in Tail, the Reverſion in Fee to the right Heirs of her Brother, of whom ſhe is one, and *A.* levies Fine, and conveys to *B.* by Leaſe and Releaſe, in Conſideration of Money paid, and of paying 600 *l.* on the Mortgage, and paying Legacies charged on the Eſtate, and afterwards marries *B.* and previous thereto the Eſtate is ſettled on *B.* for Life, then to *A.* for ninety-nine Years, if ſhe ſo long live, then to the Iſſue of the Marriage, with Remainder over; and afterwards *B.* takes Aſſignment of the Mortgage, and receives the Rents, and continues in Poſſeſſion on *A.*'s Death; the Reverſioners may redeem on paying their Share and Intereſt on the Mortgage, and on the Legacies paid, from the Time of *A.*'s Death only. *Ameſbury* v. *Brown*, *T.* 1750. 1 *Vezey* 477.]

Vide Poſt, (4 A. 10.)

(4 A. 7.) When a Mortgage ſhall not be redeemed.

By the St. 4 & 5 *W.* & *M.* 16. If any mortgage Land for a valuable Conſideration, and give not Notice in Writing under Hand, before executing it, of a former Mortgage on all or Part of the ſame Land, ſuch ſecond Mortgagee ſhall hold as an abſolute Purchaſer, freed from Equity of Redemption, in reſpect to the Mortgagor, his Heirs, Executors, Adminiſtrators or Aſſigns.

So, if he give not ſuch Notice of a former Judgment, Statute, or Recogniſance given for Security of Money, or like valuable Conſideration, unleſs on Notice thereof under Hand and Seal of the Mortgagee atteſted by two Witneſſes, the Mortgagor diſcharge ſuch former Incumbrance in ſix Months after.

So, if ſuch ſecond Mortgagee aſſigns to another, it continues irredeemable. 2 *Ver.* 590.

If *A.* who has a ſubſequent Mortgage, redeems the ſecond, he alſo ſhall hold, without Redemption. *Ibid.*

But if *A.* by Artifice obtains a ſecond Mortgage, he ſhall not take any Benefit of the Statute, tho' he had no Notice of the prior Mortgage. *R.* 2 *Ver.* 590.

[If Relief is prayed where a Mortgagee is Party, it is praying to redeem; if on Reference they do not redeem, the Court will diſmiſs the Bill, which is equivalent to a Foreclоſure. *Cholmley* v. *Counteſs Oxford*, *H.* 1741. 2 *Atkyns* 267.]

[If there is a Decree of Foreclоſure in common Form, and the Money is not paid, and a long Time elapſes, but no final Order of Foreclоſure; this is a good Defence to a Bill for Redemption, but not by way of Plea. *Senhouſe* v. *Earl*, *T.* 1752. 2 *Vezey* 450.]

[If *A.* transfers 2500*l.* *Eaſt-India* Stock to *B.* to ſecure 2000*l.* and Intereſt, and *B.* executes a *Defeazance*, and Twenty-one Years afterwards the Repreſentative of *A.* brings Bill, the Court will not decree a Redemption. *Lockwood* v. *Ewer*, *P.* 1742. 2 *Atkyns* 303.]

(4 A. 8.) Aſſignment of a Mortgage.

If a Mortgagee aſſigns the Land mortgaged, to another after Forfeiture, the Mortgagor ſhall be admitted to a Redemption, upon a Bill againſt the Mortgagee and his Aſſignee. *R. Ca. Ch.* 3.

So, upon a Bill againſt the Mortgagee only; for the Aſſignee pleaded Outlawry in the Plaintiff, by which he was barred as againſt him, and the Cauſe was heard againſt the Mortgagee only. *Ca. Ch.* 3.

And ſuch Aſſignment ſhall be taken as a new Mortgage at that Time. *Ca. Ch.* 218.

If the Mortgagee aſſigns without the Conſent of the Mortgagor, it may be decreed, that the Mortgagee account for all the Profits before and ſince the Aſſignment. *R. Ca. Ch.* 3.

If a Mortgagee aſſigns, an Account between him and the Aſſignee does not bind the Mortgagor; but a Maſter of the Court ought to examine how much was then due, and how much paid. *R. Ca. Ch.* 68.

But the Mortgagor, if he redeems, ought to pay as much as was *bonâ fide* paid by the Aſſignee, and Intereſt for it. *Vide Ante*, (4 A. 6.)

So, if a Man purchaſes an Aſſignment of a Mortgage at an Under-value, he ſhall have the Benefit of it; and the Mortgagor ſhall not redeem againſt him, without paying the whole Money due upon the Mortgage and Intereſt for it. 1 *Sal.* 155. 1 *Ver.* 476.

So, if *A.* mortgages for ſo much to be repaid within five Years and Intereſt annually, if the Mortgagee aſſigns before the five Years are expired, and after Forfeiture by Non-payment of the Intereſt; Intereſt ſhall be paid for the Sum paid by the Aſſignee, before the Mortgagor can redeem. *R.* 2 *Ver.* 135.

If a Mortgage be to *A.* his Executors and Aſſigns for Years; the Mortgagor ſhall be Tenant at Will to all the Aſſigns, as well as to the firſt Mortgagee. *Skin.* 424. *Vide Eſtates*, (H. 1.)

(4 A. 9.) A Mortgage belongs to the Executor, or Adminiſtrator of the Mortgagee.

Vide in Condition (G 2.)

If a Mortgage is redeemed, the Money ought to be paid to the Executor and not to the Heir of the Mortgagee; for it is a Part of the Perſonal Eſtate. *R. Ca. Ch.* 88. So, to the Adminiſtratrix. *R.* 2 *Ca. Ch.* 52. 187. 1 *Ver.* 4, 412.

Tho' the Mortgage be in Fee, and the Condition be for Payment to the Mortgagee, his Heirs or Executors, and tho' the Executor does not want Aſſets, and there be no Covenant for Payment of the Money. *Cont.* 1660. 1 *Ch. R.* 181. *Cont.* 11 *Car.* 1. *Dub.* 19 *Car.* 2. *Ca. Ch.* 88. *R. upon ſolemn Debate*, 28 *Car.* 2. *per Finch*, *Ca. Ch.* 285. *D.* 2 *Ca. Ch.* 52. *R.* 2 *Ca. Ch.* 187. 1 *Ver.* 412. 1 *Ch. R.* 254, 279. 2 *Ch. R.* 39.

Whether the Mortgage be forfeited, or not forfeited, at the Death of the Mortgagee. *R.* 33 *Car.* 2. 2 *Vent.* 351. 2 *Ver.* 193.

And if the Heir exhibits a Bill for Foreclosure, without the Executor, or Administrator, it shall be dismissed on Demurrer. *R. Ca. Ch.* 51. 2 *Ca. Ch.* 29.

And if the Money is paid to the Heir, upon a Bill brought by the Executor, the Heir shall be decreed to pay it to him. *R.* 31 *Car.* 1. 2 *Vent.* 348.

Otherwise, if Payment was made to the Heir at the Day limited by the Mortgage. *Semb.* 2 *Ca. Ch.* 221.

So, before Payment, the Executor or Administrator, upon a Bill against the Heir and Mortgagor, may have a Decree for Payment to him. *R.* 2 *Ca. Ch.* 221.

So an Executor or Administrator, upon a Bill, may oblige the Heir to convey to him. *R.* 2 *Ca. Ch.* 50. 1 *Ver.* 413.

So, if the Mortgagor release the Equity of Redemption to the Heir of the Mortgagee, his Administrator shall have the Benefit of the Mortgage, tho' there be Assets sufficient. 2 *Ver.* 193.

So an Executor or Administrator shall have the Mortgage, tho' the Mortgagee devises his Lands in *B.* where Part of the mortgaged Lands lie, but not all, to *A.* for the Devisee does not take the Mortgage. *R.* 2 *Ca. Ch.* 52.

So an Executor or Administrator shall have the Mortgage, tho' the usual Time for Foreclosure be elapsed. 2 *Ver.* 193.

Tho' there were two Descents to the Heir since the Mortgagee entred, and the Mortgagor refused to redeem; if the Equity is not foreclosed, or released. 2 *Ver.* 367.

So the Husband shall have the Mortgage of a Copyhold to his Wife and her Heirs, and not the Heir of the Wife. *Dub.* 1 *Ver.* 170.

So, if the Mortgagee devises the Lands in Mortgage to *A.* and the Heirs of his Body, Remainder to *B.* and afterwards the Mortgagor pays the Money to the Executor, *A.* shall have all the Money, and not the Interest only. *R.* 1 *Ch. R.* 129.

But if a Mortgagee, after a Possession of seven Years, sell to *A.* and his Heirs; the Estate goes to the Heir of the Purchaser, and shall not be taken as his Personal Estate. 1 *Ver.* 271.

So, if a Mortgagee in Fee has Possession, and so much Time is elapsed, that the Estate is not redeemable, it goes to his Heir. *Semb.* 2 *Ver.* 193.

So, if a Mortgagee in Possession devises or conveys to a Daughter and her Heirs, and she marries and dies without Issue, the Husband shall not have the Money due upon the Mortgage, but the Land shall descend to the Heir of the Wife. *R.* 2 *Ver.* 583. *Eq. R.* 2.

(4 A. 10.) Prior Incumbrance.

If a Mortgagee advances more Money upon an old Mortgage without Notice of a Marriage Settlement intervening, it shall be allowed, notwithstanding such Settlement. *R. Ca. Ch.* 119. *Vide Ante,* (4 A. 6.)

So, if a Mortgagee without Notice of a prior Incumbrance or Mortgage, purchases, after Notice thereof, a Mortgage precedent to the second Mortgage or Incumbrance, he shall hold against the *mesne* Mortgage and Incumbrance, until the first and also the third Mortgage is discharged. *Per Hale in Chanc.* 2 *Vent.* 338. *Ca. Ch.* 150, 162. *R. Ca. Ch.* 201. *R.* 2 *Ca. Ch.* 35. *R.* 1 *Ver.* 187.

[The Reason why a prior Mortgagee who has a *puisne* Incumbrance, shall not be redeemed by a second Mortgage but on Payment of both, is, that he has the legal Estate, which the Court will not take from him unless he had Notice. *Morret* v. *Paske*, *T.* 1740. 2 *Atkyns* 52.]

[A Suit depending between Incumbrancers on other Estates of Mortgagor's, and his Judgment-creditors and his Representatives, known to a Purchaser, is Notice. *Ibid.*

[The prior and the *puisne* Incumbrance cannot be tacked, unless they are the same Person in the same Right. *Ibid.*]

[A

[A Mortgage may be tacked to a Judgment, becauſe the Judgment-creditors might bring Ejectment on *Elegit*, and have the legal Eſtate. *Ibid.*]

[An Agent, Truſtee, Heir at Law, or Executor, purchaſing a *puiſne* Incumbrance, ſhall as againſt another Incumbrancer be paid no more than he gave for it; otherwiſe of a prior Creditor, tho' he gave not the full Value. *Ibid.*]

[If a prior Incumbrancer has alſo a Bond, the Bond ſhall be poſtponed to all Incumbrances by Mortgage, Judgment, or Statute-ſtaple. *Ibid.*]

[*A.* gives Judgment in 1698 for 600 *l.* to *B.* in 1707 they ſettle Accounts, and find 420 *l.* due on the Judgment, and *A.* gives *B.* a Mortgage for that Sum, as collateral Security to Judgment; in 1716 *C.* takes Aſſignment of Mortgage, reciting 90 *l.* (the Conſideration) to be the full Value of the Eſtate; *C.* is in Poſſeſſion of another Mortgage in 1688; *C.* ſhall not tack the two Mortgages, yet the Latter ſhall have Relation to the Judgment, and *C.* receive the Sum due on it prior to Creditors after 1698, and for the Money due ſince 1707, only prior to Creditors after 1707. *Ibid.*]

[A prior Judgment-creditor getting a ſubſequent Mortgage cannot tack it. *Anon. T.* 1755. 2 *Vezey* 662. *Sed Q. Vide ante, Morret* v. *Paſke.*]

['Tis a ſettled Rule, that a Judgment may be tacked to a prior Mortgage. *Shepherd* v *Titley, T.* 1744. 2 *Atkyns* 348.]

[If *A.* mortgages his Eſtate to *B.* and then the ſame to *C.* and afterwards ſells to *D.* a Fee-farm Rent iſſuing out of *D.*'s Lands, being Part of the mortgaged Premiſſes, and then *B.* and *D.* agree, that on *B.*'s being paid his Mortgage-money, he will convey the Fee-farm Rent to *D.* who agrees in that Caſe not to ſue *A.* yet *C.* ſhall be intitled to redeem *B.* and have an Aſſignment of his whole Security, and thereby to compel *D.* to redeem him as to the Fee-farm Rent. *Ibid.*]

If *A.* lends 100 *l.* to *B.* upon a Judgment, and *C.* lends 300 *l.* to *B.* upon a Mortgage, and a Term, before the Loan by *A.* was aſſigned to *A. D.* and *F.* to attend the Inheritance, and *C.* obtains an Aſſignment of the Term from *B.* and *F.* and afterwards *A.* having Notice thereof, takes an Aſſignment from *A. B.* and *D.* to *E.* in Truſt for *A.* he ſhall be preferred as to two Parts of the Term. *R.* 2 *Ver.* 525.

If *A.* mortgages to *B.* and afterwards without *B.* to *C.* and afterwards with *B.* to *D.* and others; *C.* ſhall be preferred to *D.* and the others. 2 *Ver.* 574.

If the Cogniſee of a Statute agree with the Cogniſor for Part of the Land in Satisfaction, he ſhall protect his Purchaſe by the Statute againſt a *meſne* Incumbrance. *Semb. Ca. Ch.* 36.

So if *A.* has a Mortgage of a Manor and Land, *B.* a ſecond Mortgage, and *C.* has a Mortgage of the Land, and afterwards purchaſes the Mortgage of *A.* he ſhall hold the Manor as well as the Land, till he is ſatisfied both. *R.* 2 *J. Cont. Ca. Ch.* 202.

So, if *A.* mortgages the Moiety of a Manor to *B.* and the Whole to *C.* and afterwards the Whole to *D.* and *D.* purchaſes the Mortgage of the Moiety to *B.* he ſhall hold that Moiety againſt *C.* till he is ſatisfied the Money paid to *B.* and alſo his own Money borrowed upon the Mortgage of the Whole to himſelf. *R. per Chanc. with Hale and Rainsford,* 2 *Vent.* 339.

But the Purchaſe of the firſt Mortgage protects the third Mortgage only for the Moiety of the Manor. *R.* 2 *Vent.* 339.

So, if a Purchaſer, or ſecond Mortgagee obtains a Statute, *&c.* prior to the firſt Mortgage, or before his Purchaſe, he ſhall have the Advantage. 1 *Ver.* 52.

And a Receipt for the Money lent on the ſecond Mortgage is ſufficient, without Proof of actual Payment. *R.* 2 *Ver.* 279.

So, if a ſecond Mortgagee purchaſes a Statute or Judgment prior to the firſt Mortgage, he ſhall be compelled by the firſt Mortgagee to account only for the Penalty of the Statute, and to the extended Value of the Land, till he is ſatisfied the Money due upon the Statute, and his ſecond Mortgage: For if a Cogniſor, at Common Law, ſue a *Scire facias ad computand.* he ſhall not recover, if the Cogniſee be not anſwered the Penalty of the Statute by the extended Value of the Land; tho' in *Equity* he ſhall recover, if the Cogniſee is anſwered

ſwered as much as is due upon the Statute by the true Value of the Land, but the ſecond Mortgagee, having Equity for him, ſhall not account in *Chancery*, but as a Cogniſee at Common Law. *R.* 2 *Vent.* 338. *Ca. Ch.* 167. 1 *Ver.* 50. *Hard.* 318.

But if the Statute extends to more Land than the ſecond Mortgage, if firſt Mortgagee pays the Money upon the Statute in Proportion to the other Land, the other Land ſhall be diſcharged: And ſuch Proportion may be determined by the Court. *Semb.* 2 *Vent.* 339. *Vide Ca. Ch.* 167. *R.* That he ſhall have all the Land extended, until the Statute and laſt Mortgage are both ſatisfied. 2 *J. Cont. Ca. Ch.* 202.

And if the ſecond Mortgagee purchaſes a Statute or Judgment, *&c.* prior to the firſt Mortgage, he may plead it to a Bill by the firſt Mortgagee for Diſcovery of his Title. 2 *Vent.* 337. *R. Ca. Ch.* 150, 164.

If a Man purchaſes a Leaſe for a valuable Conſideration, without Notice of a Jointure, and afterwards gets a prior Judgment and extends it, he ſhall hold againſt the Jointreſs, until he is ſatisfied by the extended Value. *Ca. Ch.* 247.

But if he takes a Judgment at firſt, and after the Jointure takes a Leaſe of the Huſband for a valuable Conſideration, he ſhall not hold againſt the Jointreſs by the extended Value, if the Judgment is ſatisfied by the true Value. *R. Ca. Ch.* 247.

If *A.* has an Annuity out of the Manor of *B.* upon which *C.* has a Mortgage, and *D.* a ſubſequent Mortgage, Reverſion to *F.* in Fee; *C.* without Notice of the Mortgage to *D.* pays 900 *l.* to *F.* and *A.* for the Purchaſe of the Annuity and Reverſion of which only 500 *l.* to *A.* he ſhall hold the Annuity againſt *D.* till the 900 *l.* is ſatisfied. *R.* 2 *Ca. Ch.* 20.

If Huſband and Wife by Fine mortgage the Land of the Wife for 400 *l.* and the Huſband pays 200 *l.* and afterwards re-borrows as much of the Mortgagee; the Heir of the Wife ſhall not redeem, without Payment of the Whole. 1 *Ver.* 41. 2 *Ca. Ch.* 98. *Vide infra.*

If a ſecond Mortgagee purchaſes a prior Incumbrance, after a Bill againſt him by the firſt Mortgagee, it ſhall be allowed. *R.* 2 *Ver.* 29, 81.

[A *puiſné* Incumbrancer cannot take in a firſt Incumbrance, and gain a Preference to a ſecond, after a Decree with Direction to ſettle the Priorities; tho' he may *pendente lite*. *Wortley* v. *Birkhead*, *T.* 1754. 2 *Vezey* 571. 3 *Atkyns* 809.]

But if a Mortgage is made by Tenant for Life, upon *Affidavit* that he has the Fee, and after his Death the Mortgagee takes another Mortgage from the Son, who had the Inheritance, for other Money advanced to the Son, and then the Son makes a Mortgage to *B.* *B.* ſhall redeem on Payment of the Money advanced to the Son, without paying the firſt Mortgage made by the Father, who had not a Title. *R.* 2 *Ca. Ch.* 23.

Otherwiſe, if a Mortgagee by a good Title advances more Money without a Fine, by which there is a defective Title as to the ſecond Mortgage, yet he ſhall hold till both Sums are paid; for he has a Title at Law, and the ſame Equity for the Money, as the Heir for the Land. *R.* 2 *Ca. Ch.* 98. *Vide ſupra.*

So, if the Mortgagee advances more Money to the Mortgagor on Bond, by which he binds himſelf and his Heirs; the Heir cannot redeem, without paying the Money on the Bond as well as on the Mortgage. 2 *Ca. Ch.* 164. 1 *Ver.* 244, 245. 2 *Ver.* 177.

[A Mortgagee, who is alſo a Bond-creditor, may tack his Bond to his Mortgage as againſt the Heir, but not as againſt intervening Incumbrancers of a ſuperior Nature. *Powis* v. *Corbet*, *T.* 1747. 3 *Atkyns* 556.]

Not in Preference to other Creditors under a Truſt created by the Will of the Mortgagor for Payment of Debts. *Hemes* v. *Bance*, *H.* 1747. 3 *Atkyns* 630.]

So, tho' the Bond be prior to the Mortgage. 2 *Ch. R.* 247.

So, if the Aſſignee of a Mortgage has Money on Bond due to him from the Mortgagor. 2 *Ch. R.* 360.

[So Mortgage to *A.* for Years, afterwards mortgage to *B.* in Fee, *A.* aſſigns to *C.* who advances more Money, and takes a Conveyance of the Inheritance, with Agreement that the Term ſhould be kept on Foot as additional Security, but it is

not aſſigned to a third Perſon; *C.* ſhall be paid his whole Money, for the Term did not merge; the Grant being void, as the Grantor had nothing in him. *Haſket* v. *Strong*, *H.* 12 *G. Str.* 689.]

[If *A.* gives Notes to *B.* expreſſing that the Money received is to be ſecured by Mortgage on his Eſtate at *S.* which Eſtate he had before mortgaged to *C.* and *B.* buys in a prior Mortgage; he ſhall protect himſelf againſt *C.* for the Notes as well as the firſt Mortgage. *Matthews* v. *Cartwright*, *T.* 1742. 2 *Atkyns* 347.]

So, if *B.* makes two Mortgages to *A.* and one is deficient, he ſhall not redeem the other, if he will not redeem both. 1 *Ver.* 245. 2 *Ver.* 207, 286.

A Purchaſer of a prior Incumbrance ſhall not have Advantage of it for ſecuring another Debt, if he had not the Mortgage, or Purchaſe of the Land without Notice, before his Purchaſe of the Incumbrance. *R. Ch. R.* 409.

If the Executor of *B.* mortgages for the Term of 1000 Years to *A.* to whom 500 *l.* is due from *B.* the Executor of *B.* ſhall not redeem without Payment of the 500 *l.* due from *B.* to the Mortgagee, tho' *B.* had Perſonal Aſſets ſufficient for Payment. 1 *Ch. R.* 249.

[But if a Deviſee in Truſt for Payment of Debts, mortgages the Eſtate to a Creditor for Money let him, he cannot retain for the old Debt alſo, but for that ſhall come in *pari paſſu*. *Ithill* v. *Bene*, *H.* 1748. 1 *Vezey* 215.]

So, if a Statute is inrolled after the Time elapſed, by Order of Court, whereby a Judgment given ſince the Date is over-reached; if the Land be in Mortgage, whereby neither the Statute nor Judgment touch the Eſtate at Law, the Judgment ſhall be preferred. *Semb.* 1 *Ver.* 234.

If a Mortgagee gets a prior Incumbrance for a leſs Sum, he ſhall be allowed, upon his Account, the Whole due upon it. 1 *Ver.* 49, 336. *R.* 2 *Ver.* 66. *Vide ſupra.*

So, if he gets a prior Statute, *&c.* and extends it after it was ſatisfied, the Mortgagor ſhall not be allowed Relief, without Payment of the Mortgage. *R.* 2 *Ver.* 30.

Otherwiſe, if an Heir or a Truſtee purchaſes it at an Under-value. 1 *Ver.* 49.

So, if a Mortgagor makes a Settlement for a Jointure, and afterwards the Mortgagee, without Notice of the Jointure, advances more Money; he ſhall hold againſt the Jointreſs till both Sums are paid. *Eq. Abr.* 311.

[If Land ſubject to the Payment of 500 *l.* and the Truſtee for it is in Poſſeſſion for ſeveral Years, and the Land is mortgaged; the Mortgagee ſhall not be affected by this Charge, for he may ſay the Land has borne its Burthen. *Moore* v. *Moore*, *T.* 1755. 2 *Vezey* 596.]

So, if a Deed, being a Security to *A.* for 200 *l.* is depoſited with him for 300 *l.* more borrowed of *A.* as a Pledge, *A.* ſhall not be compelled to ſurrender the Deed till Payment of the 300 *l.* as well as of the 200 *l.* *R. Ch. R.* 11.

If Plate and Jewels are pledged to *A.* for 200 *l.* and within two Days after are pledged by *A.* with other Goods to *B.* for 300 *l.* who alſo lends to *A.* 50 *l.* on promiſſory Note, and *A.* becomes Bankrupt; the Pawner ſhall not redeem, without paying to *B.* the 50 *l.* upon the Note and the 300 *l.* tho' no Proof of Agreement that the Plate, *&c.* ſhould be a Pledge for the Note; but the other Goods ſhall be applied in the firſt Place. *R.* 2 *Ver.* 691, 698.

But if the Mortgage be of a Reverſion for 200 *l.* upon Condition to redeem, if he paid 40 *l. per Ann.* for eight Years, he ſhall be allowed to redeem on Payment of Principal and legal Intereſt. *R.* 1 *Ver.* 402.

[If Tenant in Special Tail makes a Mortgage and dies, and the Remainderman brings Bill againſt an Attorney who had the Settlement, and the Mortgagee, and the Attorney by Anſwer ſubmits to produce it as the Court ſhall direct, but before Hearing delivers it to the Mortgagee, the Court will not compel the Settlement to be delivered up. *Siddon* v. *Charnells*, *P.* 1734. *Bunb.* 298.]

[Where there is a ſubſequent Mortgagee without Notice, who has Poſſeſſion of the Title-deeds, the firſt Mortgagee ſhall not compel him to deliver them, but on paying his Mortgage-money. *Head* v. *Egerton*, *P.* 1734. 3 *P. W.* 280.]

(4 A. 11.) Foreclosure of a Mortgage.

[A Bill of Foreclosure is not neceſſary on a Mortgage of Stock, tho' it is neceſſary on a Mortgage of Land. *Lockwood* v. *Ewer*, *P.* 1742. 2 *Atkyns* 303.]

After a Mortgage forfeited, the Mortgagee may exhibit his Bill againſt the Mortgagor, to make Redemption, or to be foreclosed.

But he cannot foreclose before the Mortgage is forfeited. 2 *Vent.* 365.

So he may exhibit a Bill againſt *B.* who hath a ſecond Mortgage, tho' there are other Incumbrancers, who are not made Parties; and ſhall foreclose him and ſuch as are Parties, tho' not others, who are not Parties. *R.* 2 *Ver.* 518.

So, upon a Bill to redeem, it may be decreed, that the Mortgagor ſhall redeem, if he pays at ſuch a Day, and if he does not pay, that he be foreclosed.

So a Bill may be by the Heir to foreclose; but the Executor afterwards ſhall have the Money due upon the Mortgage. *R.* 2 *Ver.* 66, 7. *Vide Ante*, (4. A. 9.)

And upon a Bill for Foreclosure the Court only bars the Equity of Redemption, but does not decree the Poſſeſſion generally, nor mend the Title of the Plaintiff. 2 *Ca. Ch.* 244.

[Infant foreclosed has ſix Months after coming of Age, to ſhew Cauſe againſt the Decree, but ſhall not ravel into the Account nor redeem, by paying what is reported due, but is only intitled to ſhew an Error in the Decree. *Ibid.* *Lyne* v. *Willis*, *P.* 1730. 3 *P. W.* 352.]

Bill againſt an Infant to redeem or be foreclosed; Decree ſhall be, that he be foreclosed, if on an Account now taken, the Infant do not pay the Whole due, within ſix Months after his full Age. 2 *Ver.* 392.

[*Feme Covert* intitled to equity of Redemption, ſhall be abſolutely foreclosed tho' during Coverture; and no Day ſhall be given her or her Heirs to redeem, after Coverture determined. *Mallack* v. *Galton*, *H.* 1734. 3 *P. W.* 352.]

If Bill be againſt a ſecond Mortgagee and an Infant, who has the Inheritance, there ſhall be a Foreclosure againſt the ſecond Mortgagee, tho' the Infant has ſix Months after his full Age. 2 *Ver.* 518.

So, if the Mortgage be of a Reverſion after an Eſtate for Life and for Years, a Foreclosure ſhall be decreed, to the Intent that the Mortgagee may ſell for his Money, if the Mortgagor or his Heir will not redeem. *R.* 1 *Ch. R.* 32.

If an Annuity be granted with Power of Redemption and a Clauſe of Entry for Non-payment, and the Annuitant enters, he may have a Foreclosure, that the Annuity ſhall not be redeemed, not that the Land ſhall not. *R.* 1 *Ver.* 209.

But, after Foreclosure and an abſolute Conveyance, the Mortgagee ſhall be ſubject to a Judgment, of which he had Notice before the Foreclosure. *R.* 2 *Ca. Ch.* 171.

Otherwiſe, if he had not Notice of it. *Ibid.*

So, after Foreclosure, a Redemption ſhall be admitted, upon an expreſs Agreement ſubſequent, that the Mortgage ſhall be redeemable. *Semb. Ca. Ch.* 218.

So, after a Foreclosure and a Purchaſe afterwards made of the Mortgagee, where there was a ſubſequent Mortgage before the Foreclosure, of which the prior Mortgagee at the Time of his Foreclosure had Notice. *R. Ch. R.* 409.

So, if the firſt Mortgagee exhibits a Bill againſt the ſecond to redeem or to be foreclosed, and, after a Decree for Foreclosure, deviſes to the Mortgagor; the ſecond Mortgagee ſhall redeem againſt the Mortgagor, notwithſtanding the prior Decree for Foreclosure. *R.* 2 *Ver.* 235.

So a ſecond Mortgagee, *&c.* ſhall redeem after a Decree for Foreclosure againſt the Mortgagor. 2 *Ver.* 663, 601.

So, if Creditors by Bill pray a Sale of an Eſtate, and pending the Bill the Mortgagee obtains a Decree for Foreclosure, the Creditors may afterwards redeem. *R. Eq. Ca.* 15. *

*2d Part of 2 *Mod. Ca.*

But if a ſecond Mortgagee redeems a prior after a Foreclosure, the prior Mortgagee ſhall be allowed all Expences, (to be taxed as the Bill of a Solicitor)

which

which he was at, in obtaining the Foreclosure, before his Principal and Intereſt ſhall be ſunk by the Profits. *R.* 2 *Ver.* 185.

So, after a Decree for Foreclosure, *Chancery* will enlarge the Time for Redemption, in a Caſe of Neceſſity; as where Defendant was hindered by a Time of Rebellion, from paying at the Day limited by the Decree. *R. Ca. Ch.* 64.

Tho' the Decree be ſigned and inrolled. *Ibid.*

[If Mortgagee brings Bill for a Foreclosure againſt the Mortgagor, and ſubſequent Mortgagees, and the Mortgagor acquieſces, and then the ſubſequent Mortgagees purchaſe in the firſt; the Foreclosure cannot regularly be kept open on the Mortgagor's bringing a Bill againſt the ſubſequent Mortgagees, ſuggeſting that all the Money ſecured on his Eſtate, except the firſt Mortgage, was won at Play, and forfeited to the Heir at Law, who has aſſigned it in Truſt for him, and praying to redeem on paying what was *bonâ fide* lent, but he may have the Advantage of any Equity at the Hearing, notwithſtanding the Foreclosure; yet the Court may (and in this Caſe did) indulge the Mortgagor with a ſhort Time. *Fleetwood* v. *Janſen, M.* 1742. 2 *Atkyns* 467.]

If the Defendant by his Anſwer offers to redeem, he ſhall not be foreclosed, tho' Circumſtances afterwards vary. 1 *Ver.* 448.

[If there is clear Tenancy in Tail, the Remainder-man need not be a Party to a Bill of Foreclosure; if there is an expreſs Eſtate for Life, he muſt. *Sutton* v. *Stone, M.* 1740. 2 *Atkyns* 101.]

[A Mortgagee of a Copyhold not in Poſſeſſion, may bring his Bill before Admittance for Foreclosure, and after Decree bring Ejectment. *Ibid.*]

[A Mortgagee ſuing for a Foreclosure, may at the ſame Time bring Ejectment at Law. *Booth* v. *Booth, T.* 1742. 2 *Atkyns* 343.]

[The Mortgagee of a naked Advowſon ſhould not bring a Bill of Foreclosure, but ſhould pray a Sale of the Advowſon. *Mackenzie* v. *Robinſon, T.* 1747. 3 *Atkyns* 559.]

(4 A. 12.) When it ſhall be annulled.

If a Mortgage is antient, and no Intereſt paid or demanded, it ſhall be preſumed to be ſatisfied, and *Chancery* will inforce the Vacating or Delivery of it to the Purchaſer, where the Poſſeſſion, for ſixty Years, has been free. 1 *Ch. R.* 105.

[Tho' there has been no Demand of Principal or Intereſt for twenty Years, yet a Mortgage ſhall not be preſumed ſatisfied, for the Mortgagee is ſuppoſed in Poſſeſſion, and the Mortgagor is Tenant at Will. *Leman* v. *Newnham, M.* 1747. 3 *Vezey* 51.]

[If a Mortgagee cancels a Mortgage, and it is found ſo in his Poſſeſſion, it is a Releaſe; but it does not re-convey, for that muſt be done by Deed. *Harriſon* v. *Owen, M.* 1738. 1 *Atkyns* 520.]

(4 B.) Ne exeat Regnum.

Vide Prærogative. (D. 34, 35.)

BY the Common Law, every one might go out of the Realm, when he pleaſed. *F. N. B.* 85. *A. Per* 2 *J.* 2 *Rol.* 12. 4 *Mod.* 179.

But by the St. 5 *R.* 2. 2. It was prohibited to all, without Licence, but to Peers, Merchants, and Soldiers: But this is repealed by the St. 4 *Jac.* 1.

Yet a Man may be reſtrained within the Realm by the King's Proclamation. *F. N. B.* 85. *C.*

Or, by the Writ of *Ne exeat Regnum* under the Great, or Privy Seal, or Signet. *F. N. B.* 85. *A.*

[*Ne exeat Regnum* was originally a State Writ, granted by the Chancellor on Application from the Secretaries of State, without Cauſe, or ſhewing ſuch Information as he thought of Weight; but towards the End of *James* 1*ſt*, it was thought proper to grant it in Caſe of Interlopers in Trade, great Bankrupts, Duels, and others concerning many of the Subjects. *Ld. Bacon's Ordinances,* N° 89. 3 *P. W.* 313.]

And this Writ ſhall be directed to the Party himſelf. *F. N. B.* 85. *B.*

Or, to the Sheriff commanding him, *Quod* A. *venire faciat ad ſufficientes manucaptores inveniend. quod ad partes Exteras ſine licentia, &c. ſe non divertat,* and, upon Refuſal, *quod Priſonæ committatur quouſque.* *F. N. B.* 85. *D.*

Or, it may be directed to Juſtices of the Peace, or to both. *F. N. B.* 85. *E.* 2 *Inſt.* 54.

Chancery will award a Writ of *Ne exeat Regnum* after a Bill exhibited, upon *Affidavit* of the Debt, and that the Defendant is going out of the Realm. *Ca. Ch.* 116. *Reg. App^x.* 54, 55.

[The Affidavit to obtain it muſt not only ſay Defendant is indebted, but muſt mention the Facts on which it ariſes; if againſt an Adminiſtrator, it muſt ſwear to the Belief of *Aſſets* come to his Hands. *Anon. T.* 1752. 2 *Vezey* 489.]

[The Court will not grant *ne exeat Regno*, on a Bill for a Sum due for Goods obtained by Fraud, tho' Plaintiff ſwears, he believes the Goods were worth 700 *l.*; he muſt ſwear poſitively Defendant is indebted to him in a certain Sum: If the Bill is for an Account, Plaintiff's ſwearing he believes the Balance in his Favour will amount to ſo much, is ſufficient. *Rico* v. *Gualtier*, *P.* 1747. 3 *Atkyns* 501.]

[The Court will not grant it, unleſs Plaintiff ſhews the Debt demanded againſt Defendant to be certain, not when it is on a Contingency. *Anon. M.* 1738. 1 *Atkyns* 521.]

[It ought not to be granted when the Demand is intirely at Law; for there Plaintiff has Bail, and he ſhall not have double Bail, at Law and in Equity. *Ibid. Pakeman* v. *Coſby*, *H.* 1730. 3 *P. W.* 314.]

[It is never granted where there is not a mere equitable Demand; except once, in Compaſſion to a Wife who ſued for Alimony in the Spiritual Court. *Anon. T.* 1741. 2 *Atkyns* 210.]

Or, without a Bill, on a Petition to the Lord Chancellor. *Pr. Ch.* 171.

[It ought not to be granted without a Bill firſt filed; *per Talbot* C. who ſaid he never knew it done, (tho' it was done by *Trevor*, M. R. in *Lloyd* v. *Cardy*, and by *Cowper* C. in 1709.) and ordered the Writ to be ſuperſeded, and Defendant diſcharged out of Cuſtody; but *it ſeems* he had given Bail in an Action at Law. *Brunker's Caſe*, *T.* 1734. 3 *P. W.* 312.

[The Court will not order Security to be given, if the Anſwer is come in. *Whitehead* v. *Murat*, *M.* 1724. *Bunb.* 183.]

[But if he has not anſwered, and is in Contempt, it will. *Ibid.*]

Or, if he is going into *Scotland*, tho' ſince the Union it is not out of the Realm; for the Proceſs of the Court does not extend thither. 2 *Sal.* 702. 1 *P. W.* 263.

And the Condition of the Recognizance ſhall be, That he does not go out of the Realm, *or to Scotland.* 1 *P. W.* 263.

[*Talbot* C. was doubtful whether the common Writ would reſtrain the Defendant going to *Scotland*, and alſo, whether he could alter the old eſtabliſhed Form; and the Regiſters ſaid, they never knew any other than the common Order made; and his Lordſhip would made no Order, but left them to proceed in the old beaten Path. *Hunter* v. *Maccray*, *P.* 9 *G.* 2. *C. T. T.* 196.]

A *Ne exeat Regnum* ſhall be awarded againſt a Clerk. 2 *Inſt.* 54.

And alſo againſt a Layman, *R. Ca. Ch.* 116. Awarded againſt a Woman. *Reg. App^x.* 55. Againſt a Peer, *Ibidem.*

[The Court will grant it againſt a *Feme Covert*, Executrix of her former Huſband alone, if her preſent Huſband is gone out of the Kingdom. *Jerningham* v. *Glaſs*, *H.* 1746. 3 *Atkyns* 409.]

It may be awarded upon the Surmiſe of any Man. *F. N. B.* 85. *F.*

When a Man deſigns a Prejudice to the Kingdom. *Reg. App^x.* 55. *F. N. B.* 85. *D*

So, for a private Cauſe. *R. Ca. Ch.* 116. 2 *Ca. Ch.* 245. *Semb. Cont. Ch. R.* 257.

As, if a Man be indebted to ſeveral, and it be ſuſpected, that he will go out of the Kingdom to avoid paying his Creditors. *R. Ca. Ch.* 116. *Reg App^x.* 54, 55.

If there be a Sentence againſt a Man for Alimony in the Spiritual Court, and he threatens to leave the Kingdom. *R. Ca. Ch.* 116. *R.* 2 *Vent.* 345.

If the Bill of a Solicitor upon a Taxation appears to be overpaid, upon *Affidavit* that he has not repaid the Overplus, and intends to depart the Kingdom; tho' no Bill pending againſt him. *R. Pr. Ch.* 171.

If Surety be given, that *B.* againſt whom a *Ne exeat Regnum* was prayed, ſhall not go out of the Kingdom, the Surety ſhall not be diſcharged, tho' *B.* be committed for Non-performance of a Decree. *Pr. Ch.* 230.

But a Bill to oblige an Executor to exhibit an Inventory, and to give Security to account before he went beyond Sea, was diſmiſſed upon a Demurrer; for it prayed an Injunction in the Nature of a *Ne exeat Regnum*. *R. Ch. R.* 257.

So a Writ of *Ne exeat Regnum* ſhall not be granted without Oath. *Skin.* 136.

Nor was it uſed to be granted by Courts of Juſtice, but of late Times. *Skin.* 136.

And for a particular Cauſe. 4 *Mod.* 179.

(4 C.) Notice.

(4 C. 1.) How regarded.

NOTICE of a Truſt makes a Perſon privy, and an Act, which was a Breach of Truſt in the Actor, ſhall be void as to him, who was privy; as a Purchaſer with Notice of a Truſt, Judgment, Mortgage, or other Incumbrance, ſhall be affected by it. *R. Lane* 60. *Vide Poſt*, (4 I. 3, 4.—4 W. 28.)

Tho' a Fine be levied, and five Years paſs without Claim. *R.* 2 *Ca. Ch.* 125. *Eq. Abr.* 332.

If Notice be confeſſed by *A.* who aſſigns to *B.* who denies Notice, but it is proved againſt him; tho' the Confeſſion of *A.* cannot be read againſt *B.* yet if *B.* will ſhelter himſelf by the Want of Proof of Notice to *A.* he ſhall be put in the Place of *A.* and bound by his Confeſſion. 1 *Ver.* 486.

[Denying Notice *at the Time of Execution*, or *at the Time of paying the Conſideration-money*, is not ſufficient; it muſt be, *at or before the Execution*. *Fitzgerald* v. *Burk*, *T.* 1742. 2 *Atkyns* 397.]

If a Man pays a Bond to *A.* who was but a Truſtee, having before confeſſed a Judgment, and *A.* afterwards makes a Warrant to another Attorney to acknowledge Satisfaction, the Payment to *A.* when he had Notice of the Truſt, is void. *Eq. Abr.* 332. 2 *Ver.* 197.

So, if *A.* aſſigns a Bond, Payment to him, after Notice of the Aſſignment, is void. *Eq. Abr.* 332. 2 *Ver.* 540.

[If a Judgment affecting an Eſtate in *Middleſex* is ſigned in 1733, and regiſtered 12th *June* 1735, and a Mortgage is made 24th *May* 1735, and regiſtered 2d *June* 1735, tho' there is Proof by one Witneſs that the Mortgagee knew of the Judgment, yet if he denies it in his Anſwer, the Mortgage ſhall not be poſtponed; for the Court will not break in upon an Act of Parliament, on ſuſpicion, however ſtrong. *Hine* v. *Dodd*, *H.* 1741. 2 *Atkyns* 275.]

[If *A.* ſeized of Land in *Middleſex* to himſelf and Wife, and to ſuch Perſons as they ſhall appoint, which they by Deed execute, and then *A.* mortgages, and the Mortgage is regiſtered before the Appointment, the Mortgage ſhall take place. *Scarſton* v. *Quincey*, *T.* 1752. 2 *Vezey* 413.]

(4 C. 2.) What ſhall be Notice.

If a Man has Notice before the Conveyance executed it is ſufficient, tho' it was after his Contract. *R. Ca. Ch.* 34.

[Or tho' after he has paid his Money. *Wigg* v. *Wigg*, *T.* 1739. 1 *Atkyns* 382.]

[*A.* purchaſes, pays Part, gives Bond for Reſidue, before Payment of the Bond he has Notice of an equitable Lien on the Premiſſes; this is ſufficient, for tho' he has no Relief at Law, Equity would ſtop Payment of the Bond. *Tourville* v. *Naiſh*, *T.* 1734. 3 *P. W.* 307.]

If a Truſt be by Patent for Creditors claiming within a Year, and after the Year the Patentee aſſigns to *A.* who aſſigns to *B.* not having Notice whether the Debts are paid or not, Notice of the Patent is ſufficient. *R.* 1 *Ver.* 319.

[Where a Man claims under a Conveyance, where there is an Eſtate-tail prior to the Eſtate under which he purchaſed, it is incumbent on him to ſee if that Eſtate is ſpent, and he cannot in ſuch caſe protect himſelf by Plea, as he cannot deny Notice of Plaintiff's Title. *Kelſal* v. *Bennet*, *H.* 1736. 1 *Atkyns* 522.]

If a Leaſe be made with Exception of all prior Leaſes, this ſhall be Notice of prior Leaſes and all Covenants contained in them. *Ca. Ch.* 260.

If a Purchaſer has Notice of a Settlement upon a Wife, *&c.* after Marriage, it ſhall be Notice that it was purſuant to Articles before the Marriage, tho' the Settlement does not recite them. 2 *Ver.* 384.

If a Deed mentions a Will, Revocation by another Deed, or other ſuch like Fact, Notice of the firſt Deed ſhall be reputed Notice of all that is contained in the Will, the other Deed, *&c.* to which the firſt refers; for it is his Negligence, if he does not inquire after it. 2 *Ca. Ch.* 246. *Eq. Abr.* 331.

So, if a Purchaſer ſees a Deed, which was made with Power of Revocation by Will, he ſhall be preſumed to have Notice of all that is contained in the Will. 2 *Ca. Ch.* 246.

So, if a Mortgage is excepted in a Deed, Notice of ſuch Deed ſhall be Notice of all that could be diſcovered by a Sight of the Mortgage, tho' it was not in his Power to have a Sight of the Mortgage. *R. Ca. Ch.* 291.

So, if a Jointure is mentioned, it ſhall be Notice of all contained in the Jointure-Deed. *Eq. R.* 7.

So, if a Settlement is mixt with Writings delivered to the Counſel. *Eq. Abr.* 331.

So, if Counſel had the Deeds, for the Peruſal of the Title, in which a Truſt, Mortgage, *&c.* is mentioned, ſuch Notice to the Counſel ſhall be Notice to his Client. 3 *Ca. Ch.* 110. *Eq. R.* 8. *Vide Poſt*, (4 C. 5.)

Tho' he did not obſerve ſuch Recital or Mention of the Truſt, *&c.* 3 *Ca. Ch.* 110.

So, if his Attorney, Solicitor, or Agent has Notice; as, if the ſame Scrivener tranſacts Mortgages for *A.* and *B.* *R.* 2 *Ver.* 574.

So, if *A.* treats for a Purchaſe and has Notice of the Incumbrance, and purchaſes in the Name of *B.* who pays the Money, and has no Notice. *R.* 2 *Ver.* 610. for *A.* was Agent for *B.*

But, if a Counſel has Notice upon another Occaſion, and not as Counſel for Defendant, it ſhall not be Notice to him. 1 *Ver.* 287.

Or, if the Counſel has Notice, but does not finiſh the Settlement, but another Counſel is afterwards employed. *Dub. Eq. R.* 8.

(4 C. 3.) *Lis Pendens.*

So *Lis pendens* is ſufficient Notice, without actual Notice of the Suit. 2 *Ca. Ch.* 116. (4 C. 3.) When it ſhall be Notice.]

[If a Bill is brought to eſtabliſh a Will, it is *lis Pendens*, and affects a Purchaſer under the Will. *Garth* v. *Ward*, *P.* 1741. 2 *Atkyns* 174.]

[A Decree is not implied Notice to a Purchaſer after the Cauſe is ended, for it is the Pendency of the Suit that is Notice; but if the Decree is only for an Account, and does not put an End to the Queſtion, the Suit is ſtill Notice. *Worſley* v. *E. Scarbro'*, *M.* 1746. 3 *Atkyns* 392.]

[A Suit about Money ſecured on an Eſtate, or other collateral Matter, but not relating to the Eſtate, it is not Notice to a Purchaſer of the Eſtate pending the Suit. *Ibid.*]

If

If Land is deviſed to be ſold for Payment of Debts if the Perſonal Eſtate be not ſufficient; if a Suit be commenced by the Heir againſt the Executor, or Truſtees, for an Account of the Perſonal Eſtate, a Purchaſer *pendente lite* without actual Notice ought to re-convey to the Heir, if by the Event of the Suit it appears that the Perſonal Eſtate was ſufficient. *R.* 2 *Ca. Ch.* 116.

So, if *A.* purchaſes and pays his Money the ſame Day the Bill is filed, he ſhall loſe his Money, tho' he had no Notice. *Ca. Ch.* 301.

So, if a Commiſſion iſſues againſt a Bankrupt, it ſhall be Notice of the Bankruptcy, without actual Notice, *Per* 2 *Com. Rawlinſon Cont.* 2 *Ver.* 157, 161.

If *A.* lends Money to *B.* and takes a Bond for it in the Name of *C.* and afterwards brings an Action in the Name of *C.* againſt *B.* who confeſſes Judgment, and afterwards pays the Money to *C.* (having Notice of the Truſt) upon which Satisfaction is acknowledged, by another, who was not the Attorney upon the Record; it will be a Fraud upon *A.* and the changing of the Attorney will be Notice. *Eq. Abr.* 332. 2 *Ver.* 197.

If a Bill be filed and *Subpæna* ſerved, it ſhall be Proof, againſt all Perſons, of a *Lis pendens*. 1 *Ver.* 318, 9.

Tho the *Subpæna* be not returnable till the next Term.

So, if a Bill be filed before Purchaſe, tho' no Proceſs is ſerved, it ſhall be Notice. *Semb.* 2 *Ca. Ch.* 116.

And where a Bill is filed, the Suit is depending. 5 *Co.* 47. *b.*

So, if a Man preſent at the Hearing pay Money to *B.* after a Decree that he ſhall not receive it. *Eq. Abr.* 331. 1 *Ver.* 57, 122.

But Service of a *Subpæna* is no Proof, before a Bill filed, that *Lis eſt pendens.* 1 *Ver.* 319.

(4 C 4.) When not.

Lis pendens is not Notice, if it was colluſive and not real. 2 *Ca. Ch.* 116.

So, if the Suit abates, a Purchaſer *pendente lite* ſhall not be affected by the Suit depending, without actual Notice. 1 *Ver.* 286.

So, tho' a Judgment, &c. be upon Record, it is not ſufficient Notice; for expreſs Notice of it is neceſſary. *Ca. Ch.* 37.

So, expreſs Notice is neceſſary where Land is deviſed, upon Condition to the Heir; for he takes by Deſcent. 8 *Co.* 92. *a.* 3 *Mod.* 28, 9. *Eq. Abr.* 333.

Otherwiſe, if a Deviſe be to a Stranger; for he takes by the Deviſe, and ſhall take Notice at his Peril. *Eq. Abr.* 333.

(4 C. 5.) When Notice to one affects another.

Notice of an Agreement to an Agent or Truſtee ſhall be Notice to the Party himſelf, who purchaſes: As, if the Scrivener, who draws the Mortgage, or tranſacts the Contract, had Notice of a prior Incumbrance. *Eq. Abr.* 330. *Vide Ante*, (4 C. 2.)

[If one Perſon is employed as Counſel or Agent for both Parties, both are affected with Notice to him. *Leneve* v. *Leneve*, *M.* 1748. 3 *Atkyns* 646. 1 *Vezey* 64.]

[If an Agent has Notice of a prior Incumbrance on Lands in *Middleſex*, this is a ſufficient Equity to poſtpone a ſecond Settlement, tho' the laſt is regiſtered, and the firſt not. *Ibid.*]

[If an Agent employed to place out Money on a Security, admits that by former Tranſactions he knew of an Incumbrance, but thought the Security good for both, it is good Notice. *Aſhley* v. *Bailie*, *T.* 1751. 2 *Vezey* 368.]

So, if Notice is given to *A.* who purchaſes in the Name of a Truſtee. *Eq. Abr.* 330. *Ca. Ch.* 38.

Or, in the Name of his Son. *Ibid.*

Or, the Conveyance be to the Son and his Heirs, who had not Notice. *Ibid.*

So, if *A.* has Notice and purchaſes in the Name of *B.* and then agrees that *B.* ſhall be the Purchaſer, who pays the Money not having Notice; he ſhall be affected by the Notice to *A.* for his Approbation of the Purchaſe by *A.* makes *A.* his Agent *ab initio*. *Eq. Abr.* 331. 2 *Ver.* 609.

[A ſecond

[A ſecond Mortgagee with Notice of firſt, but without Notice of a Truſt-charge prior to both, of which firſt Mortgagee had Notice, muſt take ſubject to that Demand. *E. Pomfret* v. *Ld. Windſor*, *T.* 1752. 2 *Vezey* 472.]

(4 C. 6.) When not.

[Tho' a Father making Settlement appears to have Notice of a Rent-charge on the Lands, yet this is not ſufficient Evidence of Notice, to affect Wife and Son claiming under ſuch Settlement as the apparent Owner might make, *Whitfield* v. *Fouſſet*, *H.* 1749. 1 *Vezey* 387.]

If *A.* has Notice of a prior Settlement or Incumbrance, and purchaſes, and afterwards ſells to *B.* who has not Notice, who ſells to *C.* who has; *C.* ſhall not be charged by the Notice to *A.* or to himſelf; for then an innocent Purchaſer could never ſell. *R. Cont. per Maſter of the Rolls, but reverſed per Lord Keeper, Hil.* 1695. *Eq. Abr.* 331.

[If a Man by Marriage-articles agrees to ſettle a Church Leaſe on himſelf, Wife, and Iſſue, and afterwards ſells it to a Stranger, who has no Notice of the Articles, and his Executors ſell it to *B.* who has full Notice of them, and takes a collateral Security; yet *B.*'s Purchaſe ſhall ſtand good againſt thoſe claiming under the Articles. *Lowther* v. *Carleton*, *H.* 9 *G.* 2. *C. T. T.* 187. *H.* 1741. 2 *Atkyns* 242.]

So, if *A.* purchaſes having Notice, and ſells to *B.* who has not Notice that the Vendor was only Tenant for Life, tho' a Bill by the Son againſt *B.* ſhall be diſmiſſed, yet *A.* ſhall account for the Purchaſe-Money to the Son and for Intereſt from the Death of the Father. *Eq. Abr.* 331. 2 *Ver.* 384.

And tho' *A.* takes an Aſſignment of a Mortgage to protect his Purchaſe, he ſhall be allowed only the Money due upon the Mortgage, which was prior to the Settlement. *Ibid.*

[If a Counſel employed to look over a Title, by ſome other Tranſaction foreign to this Buſineſs has Notice, it does not affect the Purchaſer. *Ibid. Worſley* v. *E. Scarbro'*, *M.* 1746. 3 *Atkyns* 392. *Lowther* v. *Carleton*, *H.* 9 *G.* 2. *C. T. T.* 187. *H.* 1741. 2 *Atkyns* 242.]

[The Court is tender of extending conſtructive Notices, but will not lay it down as a general Rule that Notice to a Perſon concerned for both Parties is not good to a Mortgagee, yet will adhere to this Rule, that Notice ſhould be in the ſame Tranſaction, *Warrick* v. *Warrick*, *H.* 1745. 3 *Atkyns* 291.]

(4 C. 7.) When Notice does not prejudice.

If a Man purchaſes for valuable Conſideration, he ſhall not be prejudiced by a voluntary Settlement, tho' he had Notice of it. *Eq. Abr.* 334.

[A Man who purchaſes for a valuable Conſideration, with Notice of a voluntary Settlement, from a Perſon who bought without Notice, ſhall ſhelter himſelf under the firſt Purchaſer, but his Intereſt muſt be exactly the ſame. *Brandlyn* v. *Ord. M.* 1738. 1 *Atkyns* 571.]

So, if a Bill be againſt a Purchaſer for valuable Conſideration, which charges that the Defendant had Notice, and that it was mentioned in ſuch a Leaſe, and Defendant denies Notice, and that it is there mentioned; he need not produce the Leaſe, tho' there be a Replication to the Anſwer, without ſome Proof that falſifies his Anſwer; for it tends obliquely to a Diſcovery of his Title. *Cont. per Maſter of the Rolls. R. per Lord Keeper* 1704, *Eq. Abr.* 334.

So, if a Purchaſer has Notice of a Settlement, which makes the Vendor Tenant for Life, but, who before Iſſue might bar the contingent Remainders, he ſhall not be affected, if he had not Notice that the Vendor had Iſſue born five Days before. *Eq. Abr.* 333. *Cited by Rawlinſon*, 2 *Ver.* 159.

(4 D.) Obligation.

(4 D. 1.) Shall be cancelled;

(4 D. 1.) Being ſatisfied. *Vide Poſt*, (4 D. 11.)

IF a Bond or other Security for Money be ſatisfied, and the Obligee will not cancel or deliver it to the Obligor, *Chancery* will oblige him to do it. 1 *Ch. R. Earl of Oxford*, 8.

So, if Part of the Debt be ſatisfied, upon Payment of the Reſidue *Chancery* will compel the Delivery of the Security.

So, if double Security be given for the ſame Debt, as a Bond and a Pawn, *&c.* if one is ſatisfied, *Chancery* will oblige the Cancelling of the other.

So, if the Money be paid to my Scrivener, who has the Diſpoſal of my Money.

Or, to my Wife, who uſually receives Money for me. *R. Ca. Ch.* 38.

So, if it be ſatisfied by one Obligor, the other ſhall be diſcharged from the Bond.

Or, if the Bond be releaſed, or otherwiſe diſcharged.

Or, if it be ſatisfied by the Principal, the Surety ſhall be diſcharged.

Or, if the Obligee has accepted other Security from the Principal.

If after a Bond of 900*l.* for Payment of 450*l.* it be agreed, that the Obligor ſhall pay 80*l. per Ann.* till the 450*l.* and every Part be paid; if by the 80*l. per Ann.* the 450*l.* and Intereſt are ſatisfied, the Bond ſhall be cancelled. *R.* 1 *Ver.* 352.

[Where no Demand has been made on a Bond for twenty Years, it ſhall be deemed ſatisfied even at Law. *Gratwick* v. *Simpſon*, *H.* 1740. 2 *Atkyns* 144.]

If a Recognizance or Bond be for Payment of an Annuity, *&c.* of antient Date, and no Annuity paid or Demand for many Years, ſo that it may be preſumed to be ſatisfied, the Land out of which it was paid being ſold by Conſent of all Parties, *Chancery* will compel the Cancelling of the Recognizance or Bond. 1 *Ch. R.* 103, 106. *Vide Poſt*, (4 D. 17.)

If Judgment be given upon the Bond. 1 *Ch. R.* 107.

[A Judgment ſhall not be preſumed ſatisfied merely from Length of Time, (as forty-two Years) if Satisfaction is not entred on Record. *Kemys* v. *Ruſcombe*, *T.* 1740. 2 *Atkyns* 45.]

(4 D. 2.) After Forfeiture.

Tho' a Bond be forfeited, *Chancery* will compel the Cancelling of it, upon Payment of Principal, Intereſt, and Coſts; and the Obligee ſhall not have the Penalty. *Vide Eq. Abr.* 91.

If the Bond be to ſave harmleſs, the Obligor ſhall be relieved generally, on Payment of ſo much, as upon a Trial at Law the Obligee appears to be damnified. 1 *Ch. R.* 199.

But if the Obligee by his Anſwer ſwears, that he is damnified above the Penalty of the Bond, there needs no Trial, but the Obligor ſhall be ouſted of his Relief without Trial. *Ibid.*

If a Bond, by a ſubſequent Agreement to take 80*l. per Ann.* till the Whole is paid, be overpaid, *Chancery* will not oblige the Re-payment of the Surplus. 1 *Ver.* 352.

But if Principal and Intereſt exceed the Penalty, *Chancery* will compel the Payment of the Intereſt and Coſts, as well as of the Principal. *R. Ca. in Parl.* 16. *Dub.* 2 *Ca. Ch.* 185. *Vide Ante*, (3 A. 4.)—*Poſt*, (4 D. 16.)

Yet, if a Judgment be obtained for the Penalty, upon Payment of ſo much as is due upon the Judgment, with Intereſt from the Time of the Judgment and Coſts at Law and Equity, the Judgment ſhall be ſatisfied and Bond delivered up, tho' the Principal and Intereſt due exceed the Sum for which the Judgment is obtained. *R. Ca. Ch.* 24. 1 *Ver.* 350.

But Money paid, not exceeding the Intereſt due, ſhall be intended to be paid for Intereſt. *Ca. Ch.* 24 *Vide Ante*, (3 S. 6.)

And, if Money be paid the ſame Term, but before actual Entry of the Judgment, it ſhall be intended as Intereſt upon the Bond, and not to be paid upon the Judgment. *R. Ca. Ch.* 24.

So, if Land be deviſed for Payment of Debts, and the Intereſt due upon a Bond exceeds the Penalty, nothing but the Penalty ſhall be paid; for the Deviſe was for Security of the Debt, and not to enlarge it. 1 *Sal.* 154.

(4 D. 3.) Or, relieved againſt;

(4 D. 3.) If the Obligation be obtained by Fraud.

If a Bond or other Security be obtained by Fraud or Practice, *Chancery* will relieve againſt it; as, if upon the Marriage of *A.*'s Son to the Daughter of *B.* *B.* will not conſent, unleſs all the Debts of the Son are diſcharged, upon which his Brother diſcharges them, but afterwards the Son, with the Conſent of the Daughter, gives a Bond for the ſame Sum to his Brother; *Chancery* will direct the Bond of the Son to be cancelled, at the Suit of the Wife, or of the Obligor himſelf. *R.* 1 *Ver.* 348. *Vide Ante*, (3 Z. 8.)

[If on Marriage-articles, *A.* gives 3000 *l.* with his Daughter, and *B.* gives up 300 *l. per Annum* of her Jointure to her Son, for a Settlement on the Marriage, but the intended Huſband ſecretly, without the Privity of his Relations, gives a Bond to refund 1000 *l.*; a perpetual Injunction ſhall go againſt the Bond, at the Suit of the Obligor himſelf *Turton* v. *Benſon*, *M.* 6 *G. per Parker* C. on Appeal from the Rolls. *Str.* 240.]

[If a poor Man ſuing for an Eſtate gives Bond to a Perſon aſſiſting him with ſmall Sums and taking Pains in the Affair, and this is obtained by preſſing for Payment of the Money advanced; the Bond ſhall ſtand as Security only for the Money advanced, and Intereſt, and the Obligee may bring *quantum meruit* for his Pains, *&c.* *Proof* v. *Hines*, *T.* 9 *G.* 2. *C. T. T.* 111.]

So, if a Bond be obtained from an Heir for 800 *l.* to be paid at the Death of his Father, upon the Delivery of Goods of 400 *l.* Value, he ſhall be relieved, upon Payment of Principal and Intereſt. *R. per Finch*, The Bargain being managed by an infamous Perſon, and the Father alledged to be then ill, who died within eighteen Months. *Conf. per North, hæſitanter.* 2 *Ver.* 359.

[If a Woman aged twenty-ſix, but her Father being alive, enters privately into joint Bonds with a Man for Marriage, tho' there are no Marks of Fraud, nor any great Inequality of Circumſtances or Condition, yet on Application of the Woman, the Court will (on public and general Conſiderations chiefly, and for that it is a Fraud on the Parent) decree the Bond to be cancelled. *Woodhouſe* v. *Shepley*, *H.* 1742. 2 *Atkyns* 535.]

[The Court will direct an Inquiry before a Maſter into the Conſideration of a Bond, if there is a Suſpcion of Fraud; as if two Bonds are given the ſame Day for different Sums, and one of them juſt double the Penalty of the other. *Reed* v. *Reed*, *M.* 1739. 2 *Atkyns* 16.]

[If a Woman about to marry, parts with ſome of her Property, or gives Security or Aſſignment, the Court will relieve, unleſs for valuable Conſideration; and in that Caſe, Huſband from whom it was concealed, tho' his Bill is diſmiſſed, ſhall not pay Coſts, unleſs the Concealment was at his Wife's Requeſt. *Blanchet* v. *Foſter*, *P.* 1751. 2 *Vezey* 264.]

[*S.* aged thirty, Father and Mother dead, married, in Poſſeſſion of 7,500 *l. per Annum*, naturally ſtrong, but hurt by Debauchery, greatly indebted, and having great Expectations from his Grandmother *M.* aged ſeventy-eight, but healthy, applies to *J.* a Stranger for 5000 *l.* to pay his Debts, which he gives him, taking a Bond conditioned for Payment of 10,000 *l.* at *M.*'s Death, if *S.* ſurvives her, but not otherwiſe. Six Years five Months after *M.* dies, and two Months after *J.* delivers up Bond to be cancelled, and *S.* now in great Circumſtances executes new Bond for 20,000 *l.* conditioned for Payment of 10,000 *l.* and Intereſt in four Months, and gives Warrant of Attorney to enter up Judgment, which is done; a Year after giving the laſt Bond *S.* pays *J.* 1000 *l.* in Part, and three Months after 1000 *l.* more, and three Months after, that is, twenty Months after *M.*'s Death *S.* dies, having never ſought Relief againſt the Bargain; his Executors ſhall have Relief only againſt the Penalty, but ſhall pay the Principal and Intereſt on the

the laſt Bond, with Coſts at Law, and for acknowledging Satisfaction, (but not in Equity) for this firſt Bond is not uſurious, nor contrary to Conſcience, and relievable on any Principal of Equity; and if it had, yet the new Bond amounts to a Confirmation, and is ſufficient to bar the Executors of Relief. *Earl Cheſterfield, Executor of Spencer*, v. *Janſſen Bart. T.* and *H.* 1750. on great Conſideration, *per Hardwicke* C. *Lee* C. J. *Willes* C. J. *Strange* M. R. and *Burnet* J. unanimouſly. 1 *Atkyns* 301, 339. 2 *Vezey* 125. 1 *Wilſ.* 286.]

(4 D. 4.) If the Conſideration be not performed. *Vide Poſt*, (4 D. 7, 18.)

So, if a Bond be obtained, without a Conſideration performed; as, in Conſideration of a Debt aſſigned, which cannot be recovered.

But if the Bond be to pay 20*l. per Ann.* to *A.* for Life in Conſideration that he has aſſigned two Leaſes to the Obligor; tho' the Leaſes were forfeited before Aſſignment, yet if the Leſſor does not take Advantage of it, the Obligor ſhall not be relieved. *Ch. R.* 49.

(4 D. 5.) If the Conſideration be illegal.

So, if it be obtained for a Thing illegal; as upon a ſimonaical Contract.

But a Bond to reſign, upon Requeſt, ſhall not be avoided. *Vide Egliſe*, (N. 3.)

Yet, if an ill Uſe be made of a Bond to reſign, as if he detains his Tithes, *&c.* an Injunction ſhall be granted upon it. *R.* 2 *Ca. Ch.* 186. 1 *Ver.* 411, 412. *Vide Egliſe*, (N. 3.)

[If on Bond of Reſignation, inſtead of requiring it it is agreed Incumbent ſhall pay 30 *l. per Annum*, and he pays it for ſome Years; Injunction ſhall be granted to the Bond. *Peele* v. *Chapel*, *M.* 9 *G. Str.* 534.]

So, if the Conſideration of the Bond was for procuring a Marriage, tho' there does not appear any Fraud or other Misfeaſance in obtaining it, *Chancery* will give Relief. *R. Ca. Parl.* 77. *R.* 1 *Ch. R.* 87. *R.* 1 *Ver.* 412.

[If a Man gives Bond to another, for uſing Influence over his Grandfather to make a Will in his Favour, and not alter it, it ſhall be delivered up, but without Coſts. *Debenham* v. *Ox*, *T.* 1749. 1 *Vezey* 276.]

Or, for Money borrowed when the Obligor was engaged in Play by the Artifice of the Obligee. 1 *Ch. R.* 89.

Or, for Payment, if he did not marry his Servant. *R.* 2 *Ver.* 102.

So, if a Bond be by a Son, upon the Settlement of a Houſe upon him by his Brother, who had a Prejudice againſt their Mother, that he ſhould never permit his Mother to come to his Houſe. 1 *Ver.* 413, 4.

If a Bond be to pay 100*l.* if ſhe married a ſecond Huſband; tho' there be a Counter-Bond to pay as much to her Executors, if ſhe did not marry. *R.* 2 *Ver.* 215, 6.

So a Recognizance, Bond, *&c.* by Tenant in Tail, that he will not ſuffer a Common Recovery, ſhall be cancelled. *Mo.* 809.—*Cont.* If given by a Son to a Father at the Time of the Settlement on him in Tail. 2 *Ver.* 233.

So, a Bond by Tenant in Tail, that he will not commit Waſte. *R.* 2 *Ver.* 251.

So, if a Bond was given by an Apprentice for Money won at Gaming by another Apprentice. *R.* 2 *Ver.* 291.

But if *A.* gives a Bond and Judgment for Money which he borrows to ſupply Perſons, who game, and gives large Premiums; *Chancery* will not relieve, without Payment of Principal, Intereſt, and Coſts. *R.* 2 *Ver.* 171.

[If a Bond is given for having procured the Office of a Superviſor of Exciſe, and for being to procure the Office of Collector, it is within *Stat.* 5 & 6 *Ed.* 6. and ſhall be cancelled. *Law* v. *Law*, *M.* 9 *G.* 2. *C. T. T.* 140. 3 *P. W.* 391.]

[If a Man on a Compoſition with his Creditors, gives a Bond to one to pay him the Reſidue of his Debt, over and above the Compoſition, in order to induce him to conſent, it is void, as within the Equity of 5 *G.* 2. *c.* 30. *ſſ.* 11. *Semb. Spurret* v. *Spiller*, *M.* 1740. 1 *Atkyns* 105.]

[If a Man living ſeparate from his Wife, marries a Woman who knows not his Wife is living, which ſhe afterwards diſcovers, but the Man prevails with her to ſtay with him; and five Years after gives a Bond to a Truſtee for her, to leave her 1000*l.* at his Death, and dies; this ſhall be poſtponed to all ſimple Contract Debts;

Debts; it is worſe than a voluntary one, being on a wicked Conſideration; had it been given immediately after the Diſcovery, and ſhe had quitted him, it would have been good. *Lady Cox's Caſe, M.* 1734. 3 *P. W.* 339.]

If a Man be bound as Surety, and the Principal has paid the Money, and afterwards the Surety is ſued, he ſhall be relieved in *Chancery*. (4 D. 6.) Obligation by a Surety.

So, if the Surety is damnified, he ſhall be relieved againſt the Principal, tho' he has not a Counter-ſecurity: So by the Cuſtom of *London*. 1 *Ver.* 456.

[But a Surety has no Right to have the Bond aſſigned to him on paying the Money; and if he tenders the Money on that Condition, which the Obligee refuſes and brings Action, and Surety brings Bill, Surety ſhall pay Coſts. *Gammon* v. *Stone, M.* 1749. 1 *Vezey* 339.]

[The Court will not order an Obligee to aſſign a Bond to the Surety on Payment, for the principal Co-obligor might then plead Payment, on an Action in the Name of the Obligee; but *Caſe*, or perhaps *Aſſumpſit*, lies. *Woſſington* v. *Sparks, T.* 1754. 2 *Vezey* 569.]

[If *A.* Tenant in Tail to raiſe Money to pay Debts on his Eſtate, propoſes to his Brother *B.* Tenant in Tail in Remainder to join in Mortgage for 1000 *l.* and in a Bond, which is done, and *A.* only receives the Money; the Perſonal Eſtate of *A.* ſhall be liable in the firſt Place. *Robinſon* v. *Gee, T.* 1749. 1 *Vezey* 251.]

And if the Land of the Principal deſcends to his Heir, and is conveyed by him in Truſt, the Surety ſhall compel a Sale of the Land for his Payment.

Or, if Debts are aſſigned by the Principal for Satisfaction of the Surety, he ſhall compel the Payment thereof to himſelf.

If *A.* makes a Mortgage and *B.* is Surety for him, and afterwards it appears that the Mortgage was upon a defective Title, but he, who had the Title, in Compaſſion to *A.* makes a Leaſe to *D.* in Truſt for *A.* and then *B.* is ſued by the Mortgagee; he ſhall compel *D.* to aſſign for his Security. *R.* 2 *Ver.* 12.

If there be a Judgment againſt *A.* and againſt his Bail, and afterwards the Sureties of *A.* being ſued, pay the Money; they ſhall be aided againſt the Bail, and the Judgment againſt the Bail ſhall be aſſigned to ſecure to them Principal, Intereſt, and Coſts, without Contribution. *R.* 2 *Ver.* 608.

Tho' the Sureties by their Bill alledge an Agreement to pay a Proportion, if the Bail deny the Agreement. 2 *Ver.* 609.

If one Surety pays the Whole, he ſhall have Contribution againſt the other Surety. *Semb. Cont. Godb.* 243. *Acc. Ch. R.* 15. *Vide Ante*, (2 S.)

[If two Perſons are jointly bound, and one dies, Equity will decree his Repreſentative to be charged *pari paſſu* with the Survivor. *Primroſe* v. *Bromley, M.* 1739. 1 *Atkyns* 89.]

So, if three are bound in a Bond, Recognizance, *&c.* and one only is ſued and pays the Whole, and another is inſolvent, he who has paid ſhall have Contribution againſt the Third for a Moiety. *R. Ca. Ch.* 246. 1 *Ch. R.* 35, 120. But *R.* that the third Surety ſhall pay only a Third. 1 *Ch. R.* 150.

So, by the Cuſtom of *London*, one Surety paying the Whole ſhall make the other Sureties contribute. 1 *Ver.* 456.

If a Surety changes himſelf for another not ſufficient, he ſhall not be charged in Equity, upon a Suggeſtion of Covin in ſuch Exchange; for Equity will not charge a Surety further than he is bound by Law. 1 *Ver.* 196.

[If *A.* and *B.* Principals, and *C.* Surety, are jointly and ſeverally bound to *D.* and on *C.*'s becoming uneaſy, *D.* agrees with *A.* to take four Notes, and a Draft of *A.* and *B.* on a Banker, in Lieu of the Bond, but makes *A.* give him a Note ſigned in the Names of *A. B.* and *C.* (but without *C.*'s Knowledge, *Semb.*) to make good any Deficiency, and *D.* puts the Bond, with a Receipt for Principal and Intereſt, into *C.*'s Hands, and *A.* and *B.* become Bankrupt, *C.* ſhall not be liable. *Skip.* v. *Huey, P.* 1744. 3 *Atkyns* 91.]

[If a Bond is burnt or cancelled by Accident or Miſtake, or procured by Frand by the Principal to be delivered up, this Court will ſet it up againſt a Surety, tho' extinguiſhed at Law. *Ibid.*]

So, if a Son is bound in a Recognizance with a Father to pay the Marriage-Portion of his Daughter, but the Recognizance is defective in Law; the Son ſhall not be charged in Equity. 2 *Ver.* 393.

[If a Father gives Bond for Money advanced by his Daughter to his Son on his Marriage, the Son pays the Intereſt; yet it ſhall be a Debt on the Father's Eſtate, for it is an Advancement of the Son. *Hill* v. *Ballard*, 1747. 1 *Vezey* 77.]

[A Receiver ſhall not be removed at the Requeſt of his Sureties only, nor the Sureties diſcharged that others may be appointed, unleſs it appears for the good of the Eſtate. *Griffith* v. *Griffith*, *T.* 1751. 2 *Vezey* 400.]

(4 D. 7.) If there was no Conſideration for it. *Vide Ante.* (4 D. 4.)

So the Obligor ſhall be relieved, where the Bond was given without a real Conſideration; as, if the Leſſee of Tenant for Life at the Rent of 100*l. per Ann.* gives a Bond for Part of the Rent due at *Michaelmas*, where the Tenant for Life died before *Michaelmas*, tho' his Death was known. *R. Ca. Ch.* 239.

If *A.* gives Bond to ſettle his Eſtate upon his Brother, and afterwards marries. *R.* 2 *Ver.* 189.

[The Expence a Man is at in ſtanding for Member of Parliament at the Requeſt of another, is not a valuable Conſideration. *Stiles* v. *Attorney-general*, *H.* 1740. 2 *Atkyns* 152.]

(4 D. 8.) If there would be a double Charge by the Obligation.

So an Obligor ſhall be relieved, if there would otherwiſe be a double Charge upon him.

But if there be a Decree againſt *A.* to pay 400*l.* and he pays 100*l.* and gives a Bond for the Reſidue, and afterwards becomes bound with *B.* the Obligee, as Surety for 100*l.* That Bond, which is accumulative for the Money decreed, ſhall not be taken to be in Satisfaction of the 100*l.* for which *A.* was Surety with *B.* *R. Ch. R.* 297.

(4 D. 9.) If there be an artful Uſe of ſtrict Words.

So, if the Obligee makes an ill Uſe of Words inſerted in the Condition, the Obligor ſhall be aided in Equity; as, if a Mother gives a Bond for her Son, being an Apprentice, for his honeſt Behaviour, and that ſhe will pay all that her Son by Note under his Hand acknowledges that he has embezzled; and the Maſter obtains a Note of the Son of his Embezzlement, and three Years afterwards informs his Mother thereof; the Obligor ſhall be aided, if ſhe pays as much as is proved upon an Iſſue to try *Quantum damnificatus*, and the Note ſhall not be allowed in Evidence at the Trial. *Ch. R.* 47.

[If an unqualified Perſon taken poaching gives Bond for 100*l.* with his Father Surety, not to ſhoot, hunt or fiſh again, without Licence from the Gamekeeper, or in Company with qualified Perſon; and three Years after, invited by the Gamekeeper's Brother, he angles and catches two Flounders in his Company, and dies; and two Years after the Father is an Evidence againſt two of the Lord's Servants, and then the Bond is recovered againſt him, the Court will order the Penalty and Damages to be returned. *Roy* v. *D. of Beaufort*, *T.* 1741. 2 *Atkyns* 190.]

(4 D. 10.) So the Obligor ſhall be relieved;

(4 D. 10.) Where the Condition by Accident becomes unreaſonable.

So the Condition of a Bond ſhall be qualified in Equity. *Vide Ante*, (2 Q. 1.)

As, if an Executor gives a Recognizance to the Chamberlain of *London*, for Payment of an Orphan's Portion abſolutely, and afterwards the Aſſets fail; the Executor ſhall not be bound to pay beyond the Extent of the Aſſets. *R. Ca. Ch.* 191.

But a Bond given for Money to be paid upon a Purchaſe ſhall not be avoided, becauſe the Purchaſe does not anſwer his Intent. 2 *Ver.* 243.

So, if a Bond be to pay 40*l. per Ann.* out of the Profits of an Office, and afterwards the Office was taken away for ſeveral Years by the Uſurper, and upon the Reſtoration of the King revived; he ſhall not pay during the Years in which the Office was ſuppreſſed. *R. Ca. Ch.* 72.

If

If a Bond be for Payment of Rent for a Wharf, which becomes ſurrounded by Water; he ſhall be relieved againſt the Penalty of the Bond, but not againſt the Rent. *R. Ca. Ch.* 84.

If a Bond be upon Bottomree, in Conſideration of 400*l.* to perform a Voyage in ſix Months, and at the End of ſix Months to pay the 400*l.* with 40*l.* *Premium*; if the Ship is detained in the River, he ſhall pay only legal Intereſt. *R.* 1 *Ver.* 263.

[If *A.* borrows Money of *B.* on Bottomree, and agrees to pay 26 *l. per Cent.* the Principal to be diſcharged when the Remittances from the Ship and Produce are ſold, after the Return of the Ship till the Sale only 5 *l. per Cent.* to be paid; Proviſo, if the whole Goods loſt, the Principal to ſink; if Part, to abate proportionably; *B.* ſhall have 26 *l. per Cent.* for the Sums lent during the Voyages outward and homeward; as to the homeward, only in Proportion to the Value of the Goods remitted; and 5 *l. per Cent.* for the Reſt of the Time. *Warner* v. *Watkins, P.* 1737. 2 *Atkyns* 4.]

If a Bond be by Mariners that they will not demand Wages till the Return of the Ship from the *Eaſt-Indies* to *London*, and the Ship in the Return is taken by an Enemy; the Mariners ſhall have Wages to the laſt Place of Delivery. *R.* 2 *Ver.* 728.

So, if the Condition of the Bond be performed by a Thing equivalent, the Obligor ſhall be relieved; as, if the Condition be to convey 50*l. per Ann.* for a Jointure, and he deviſes 50*l. per Ann.* to her; for it ſhall be intended in Diſcharge of the Bond. *R.* 1 *Ch. R.* 46. (4 D. 11.) Or, is ſatisfied by other Means. *Vide Ante,* (4 D. 1)

Or, to leave his Wife, if ſhe ſurvives, 500*l.* and the Huſband by Deviſe gives her Lands for Life, and other Lands in Fee, and makes his Wife Executrix; if the Real and Perſonal Eſtate given to the Wife amount to 500*l.* the Heir ſhall have Relief againſt the Bond. *Ch. R.* 43.

So, if the Bond was given by Contrivance. *Vide Ante,* (3 Z. 8.—4 D. 3.) (4 D. 12.) If the Obligation was given by Contrivance, or by Force, or Terror.

So, if a Bond be obtained by Dureſs, it ſhall be decreed to be cancelled.

Or, by Force or Terror, tho' there be no actual Dureſs. 2 *Ver.* 497.

But if a Bond, Note, *&c.* pretended to be given through Terror, be afterwards voluntarily confirmed by Judgment, Mortgage, *&c.* it ſhall not be cancelled by a Decree. *Eq. R.* 9.

[If *A.* under criminal Proſecution, unable to get Bail, employs *B.* an Attorney, who by *A.*'s Inſtructions in Writing, draws his Will, with a Legacy of 1000*l.* to *B.*, who afterwards procures Bail for *A.* and on the very Day *A.* gives Bond to *B.* to be void on leaving him a Legacy of 1000 *l.* *A.* afterwards revokes this Will, and makes another, leaving no Legacy to *B.*; yet Equity will relieve againſt the Bond. *Walmſley* v. *Booth, T.* 1739. and *P.* 1741. 2 *Atkyns* 25.]

(4 D. 13.) So the Obligee ſhall be relieved;

So an Obligee ſhall be relieved, where the Deed, or Bond is loſt. (4 D. 13.) If the Obligation be loſt.

Tho' the Deed, or Bond be voluntary. *Semb. Ca. Ch.* 78.

So, if a Bond be loſt and the Principal inſolvent, the Obligee ſhall be relieved againſt the Surety. *R. Ca. Ch.* 78. 2 *Ca. Ch.* 22, 3.

So, if a Statute, Recognizance, *&c.* be loſt.

So, if an Annuity be given to a Maid Servant, and the Bond for ſecuring it is loſt, it ſhall be decreed. *Eq. Abr.* 24.

[If *A.* and *B.* give a joint Bond, and the Condition is joint and ſeveral, the Repreſentatives Real and Perſonal of one dying, are liable. *Biſhop* v. *Church, M.* 1750. 2 *Vezey* 100, 371.]

An Obligee does not loſe his Equity againſt a Joint-obligor or his Repreſentatives, by refuſing them Liberty to ſue the other Joint-obligor in his Name; for he is not obliged to do it. *Ibid.*]

But there ſhall be no Relief upon a Motion, without a Bill againſt all concerned. *Ca. Ch.* 270.

So,

(4 D 14.) If the Performance was not effectual.

So, if Husband gives a Bond after Marriage to make a Jointure upon his Wife, the Husband makes a Jointure and the Bond is cancelled, and afterwards the Jointure is evicted; the Wife shall be relieved out of the Personal Estate of the Husband to the Value of the Jointure. 1 *Ver.* 427.

If *A.* gives a Bond to a Lessee for his quiet Enjoyment, and he is evicted for Non-payment of Rent, upon which the Bond is sued and 20*l.* recovered; *Chancery* will compel the Lessee to re-pay the 20*l.* to *A.* 1 *Ch. R.* 95.

So if *A.* lends 100*l.* to *B.* and *C.* and takes Bond for it, in the Name of a Trustee, from *B.* and *C.* and afterwards marries *B.* tho' the Bond be extinct at Law, *A.* shall have Relief in Equity. 2 *Ver.* 290.

[If Money is lent to two Persons, and either thro' Fraud or Want of Skill the Bond is made *joint* only; the Court will decree as if it had been joint and several. *Simpson* v. *Vaughan*, *H.* 1739. 2 *Atkyns* 31.]

[If Husband previous to Marriage gives Bond to Wife, to secure her 1700*l.* if she survives; as there is Fraud in the Husband, Equity will carry the Agreement into Execution according to the Intention. *Watkyns* v. *Watkyns*, *M.* 1740. 2 *Atkyns* 96.]

If *A.* gives a Bond to *B.* a Merchant, as a Security for his Service in buying Goods Abroad, where he is to stay a limited Time, he buys very little, and returns before the Time; this Court cannot decree the Penalty, for it is a Bond for *Service* only, and not like a *Nomine Pœnæ*, where it is considered as the stated Damages. In this Case the Remedy is Action *quantum damnificat*. *Benson* v. *Gibson*, *M.* 1746. 3 *Atkyns* 395.]

(4 D. 15.) But the Obligee shall not be relieved;

(4 D. 15.) If the Obligor was a Surety, &c. and not chargeable by Law.

But, generally, an Obligee should not be relieved in Equity against a Surety, upon a Defect in the Bond, whereby the Surety is not chargeable by Law. *R.* 2 *Ca. Ch.* 23.

Tho' the Defect happens by the Act of the Court itself; as, if the Court orders a Recognizance with Surety to perform an Order upon the Hearing of a Cause, and to pay what shall appear due by the Report of such a Master, and the Master dies, and the Plaintiff dies insolvent, whereupon the Obligee procures *A.* to take out Administration and to revive the Suit, and obtains a Report of another Master that 300*l.* is due. *Ibid.*

So an Obligee shall not be decreed to cancel a prior Security, upon an Agreement to do it upon giving other Security to his Creditors, if the other Security be not effectually given. *Ca. Ch.* 302.

(4 D. 16.) Nor shall he be relieved beyond the Penalty of the Obligation.

So an Obligee shall not be relieved beyond the Penalty of his Bond; as, if *A.* covenants with the *East-India* Company, to pay a Mulct for every Piece of Cloth exported, and takes *B.* for his Mate, who gives Bond of 50*l.* Penalty, that he will not export, but afterwards exports so much, that the Mulct amounts to 70*l.* *A.* shall not have Relief for the Residue beyond the Penalty of the Bond. *R. Ca. Ch.* 226. *Vide Ante*, (4 D. 2.)

If *A.* upon a Sale of Land, gives a Statute or Bond for quiet Enjoyment, and the Land was intailed, *Chancery* will not relieve the Purchaser, beyond the Penalty of the Bond or Statute. *R.* 1 *Ch. R.* 94. *Eq. Abr.* 288.

If *A.* gives a Bond of 1600*l.* Penalty to pay 77*l.* *per Ann.* till 1100*l.* be satisfied, and does not pay it; he shall be discharged on Payment of the Penalty of the Bond. 1 *Ch. R.* 201.

So, tho' he has paid divers Sums before. *Q.* 2 *Ver.* 509.

But if the Obligee has Judgment, and does not take out Execution, he shall have Interest after the Judgment as well as before, tho' it exceeds the Penalty of the Bond, and it was his own Laches that he did not take out Execution. *Eq. Abr.* 288.

If a Bond recites an Agreement and is given for the Performance of it; the Obligor shall be decreed to perform, tho' it exceeds the Penalty. *R.* 2 *P. W.* 192.

[So if a Father on Marriage of his Daughter, gives Bond to ſettle One-third of whatever Lands come to him on his Father's Death, the Court will decree a ſpecific Performance. *Hopſon* v. *Trevor*, *M.* 9 *G. Str.* 533.]

If a Son is bound with his Father to *A.* for 200*l.* and the Father gives a Statute to the Son for his Indemnity, and afterwards mortgages to *A.* for 200*l.* he ſhall not be allowed to make uſe of that Statute to defeat the Mortgage for the 200*l.* *R.* 2 *Ver.* 40.

If a Leſſee agrees to pay 20*s.* an Acre Increaſe of Rent, if he plows Meadow, *&c.* he ſhall not be relieved againſt the Penalty. 2 *Ver.* 119.

(4 D. 17.) An Obligation ſhall be delivered up;

(4 D. 17.) If it be not ſued within a reaſonable Time.

So an Indenture of Apprenticeſhip, and a Bond for Performance, ſhall be delivered up after the Service is expired, if not ſued within a reaſonable Time. *R. Ca. Ch.* 70.

So a Mortgage ſhall be delivered up to the Purchaſer, if the Mortgagee be conuſant of the Purchaſe and does not give Notice, nor make demand for 17 Years; for it ſhall be preſumed to have been diſcharged. 1 *Ch. R.* 60.

So, if a Bond be to pay 30*l.* within nine Days, and it is put in Suit after two and twenty Years, where the Defendant was at all Times reſponſible. 1 *Ch. R.* 78, 88.

So, tho' the Suit be by an Executor, where there had been no Demand of Principal or Intereſt, and the Teſtator died but 8 Years before. 1 *Ch. R.* 78.

So a Statute, or Recognizance, after 40 or 50 Years ſhall be preſumed to be diſcharged, where no Demand appears, and there have been ſeveral Purchaſes of the Eſtate. 1 *Ch. R.* 106, 137.

But where Intereſt has been paid, the Antiquity of the Statute, Bond, *&c.* does not prejudice. *Ca. Ch.* 304.

[Where two Partners are Obligors, and on breaking up the Partnerſhip agree that all Bonds ſhall be diſcharged by one only, and the Obligee agrees with him to leave the Money with him on a higher Intereſt, and receives ſuch Intereſt accordingly, and leaves the Money in his Hands for many Years while ſolvent, and on a Commiſſion of Bankrupt comes in and has his Dividend, yet the other Obligor ſhall pay the Remainder of the Principal and Intereſt at the firſt Rate. *Heath* v. *Percival*, *M.* 7 *G. Per Parker* L. C. *Str.* 403.]

(4 D. 18) If the Obligee refuſes to perform his Part. *Vide Ante*, (4 D. 4.)

If the other Party refuſes Performance of the Agreement for which the Bond was given, *Chancery* will compel the Delivery of the Bond to the Obligor; as, if *A.* ſells Land, a Ship, *&c.* and takes a Bond for the Money; if *A.* afterwards refuſes to convey, the Vendee ſhall have his Bond delivered up, tho' the Vendor afterwards is willing to convey. *R.* 2 *Ca. Ch.* 5. *Vide Ante*, (2 C. 16.)

If *A.* puts his Son Apprentice to *B.* and gives a Bond for his Fidelity, and *B.* covenants, that he will ſettle the Caſh-Book every Month; if *B.* neglects to do it, and the Son imbezils 800*l.* *A.* ſhall be relieved for ſo much as was imbeziled after the firſt Month. *R.* 2 *Ver.* 518, 9.

(4 D 19.) When there ſhall be no Relief upon an Obligation;

(4 D. 19) If the Penalty does not appear exceſſive.

An Obligor ſhall not be relieved againſt the Penalty of a Bond, where there is no Meaſure, which will ſhew the Penalty to be exceſſive; as, where a Man is bound in 20*l.* that he will not prejudice another in his Trade, and he ſays, that his Wares are not good, whereby he loſes a Cuſtomer for a ſmall Matter; the Obligor ſhall not be relieved, for the Coſts at Law and Equity are equal to the Penalty. *R. Ca. Ch.* 184.

[If an unqualified Perſon is carried before a Juſtice for carrying a Gun enters into Bond with his Father for Surety of 100*l.* not to ſhoot, hunt, fiſh, *&c.* again, unleſs with the Gamekeeper's Licence, or in Company with a qualified Perſon; it ſhall not be ſet aſide; for ſuch Bonds are beneficial, even to the Obligor;

gor; and they are not *malum in se* but ſimilar to the Bonds directed to guard againſt Offences in the Cuſtoms, and againſt Deer-ſtealing. *Roy* v. *D. of Beaufort*, *T.* 1741. 2 *Atkyns* 190.]

[Such Bond ſhall not be deemed a bare Security that the Obligor ſhall not offend again, but is by Way of ſtated Damages between the Parties. *Ibid.*]

[If *A.* aged twenty-four, gives Bond for Payment of 500*l.* to *B.* ſix Months after his Father *C.*'s Death, then ſeventy, if he ſurvives him, if not the Bond void; *B.* dies, two Years after his Executor aſſigns to *D.* *C.* dies, *D.* dies, Application to *A.* who does not deny the Bond, but knows nothing of *D.*'s Executor, *A.* dies, Application to his Widow, then Action brought and Verdict and Judgment, and before Judgment a Bill for Relief fifteen Years after *C.*'s Death, this Court will only relieve againſt the Penalty. *Hill* v. *Caillovel*, *M.* 1748. 1 *Vezey* 122.]

(4 D. 20.) If there was no real Satisfaction. *Vide Ante*, (4 D. 1, *&c.*)

So he ſhall not be relieved upon Pretence of Payment, where there was no real Satisfaction; as, where *A.* was bound to *B.* being ſequeſtred in the Time of *Oliver Cromwell*, and had an Order to retain the Debt due on the Bond for ſo much due to him by the State; this being a mere Retainer, and the Bond not cancelled or delivered up to *A. Chancery* would not relieve him againſt a Suit by *B.* tho' the Act of Oblivion diſcharged it upon Payment, *&c.* *Per Bridg. Ld. K. Ca. Ch.* 59.

So he ſhall not be relieved, upon the Preſumption of Payment from the antient Date, when there is a reaſonable Cauſe for the Delay. 1 *Ch. R.* 117. *Vide Ante*, (4 D. 17.)

So, if *A.* and *B.* Partners, be bound to *C.* and afterwards the Partnerſhip is determined, and the Share of *A.* paid to him, and *B.* undertakes the Payment of all the Debts, and upon Application by *C.* for Payment, it is agreed to be continued at 6*l.* *per Cent.* and afterwards *B.* becomes Bankrupt; the Executor of *A.* ſhall not have Relief againſt the Obligee, for Bonds are not diſcharged till Payment. *R.* 1 *P. W.* 683.

(4 D. 21.) If it was *Præmium Pudoris.*

[A Bond given to a kept Miſtreſs for Maintenance of her and her Child, ſhall not be ſet aſide in Favour of Obligor's legitimate Children, or Heir, (if not obtained by Fraud;) but ſhall not be paid out of Perſonal Eſtate till after ſimple Contracts, and if Perſonal falls ſhort, then out of Real Eſtate. *Cray* v. *Rooke*, *M.* 9 *G.* 2. *C. T. T.* 153.]

So he ſhall not be relieved, for that the Bond was given to a Woman, whom the Plaintiff kept as his Miſtreſs, where it was given with his free Conſent, and not obtained by a common Strumpet. *R.* 1 *Ver.* 483, 4. 2 *Ver.* 242.

Tho' it is recited as given, for Money borrowed. 1 *Ver.* 483.—Or, for ſecret Service. 2 *Ver.* 242.

Tho' the Defendant was proved to be a common Strumpet, where that was not expreſſly charged by the Bill. 1 *Ver.* 484.

[If *A.* becomes acquainted with an Orange-wench at the Playhouſe, gives her a Bond for 1000*l.* to marry her in a twelvemonth, or pay her 500*l.* and afterwards gets the Bond from her and deſtroys it, but offers to execute a new one, which he afterwards refuſes, and ſhe brings Bill for the 500*l.* and dies, and her Mother and Adminiſtratrix revives; *A.* ſhall pay her the 500*l.* and Intereſt from filing the original Bill, and Coſts. *Atkins* v. *Farr*, *H.* 1738. 1 *Atkyns* 287.]

So, if the Bond cannot be recovered at Law, upon Proof that there was ſuch a Bond, the Woman ſhall be aided. 2 *P. W.* 432.

So a Bond or a Grant to a Woman debauched, defective through Fraud, ſhall be aided by the Court. *Eq. Abr.* 31. 2 *P. W.* 432.

So a Bond to a Maid-Servant ſhall not be preſumed to be *ex turpi Cauſâ*, if it be not proved. *Eq. Abr.* 24.

But a Bond obtained by a common Strumpet by Impoſition ſhall be relieved againſt, at the Suit of the Executor of the Party. *R.* 2 *Ver.* 188.

[If

[If a Bill be brought to have Satisfaction for a Bond alledged to be given as *præmium pudicitiæ*, and a Croſs-bill to be relieved againſt it, on a Suggeſtion that the Obligee was a lewd Woman of an infamous Character; under this general Charge, Evidence of particular Facts may be given, but it muſt be pointed and applied to the general Charge; and if it is proved that ſhe was guilty of Acts of of Lewdneſs before her Acquaintance with the Obligor, the Court will order the Bond to be delivered up. *Clarke* v. *Periam*, *T.* 1742. 2 *Atkyns* 333, 337.]

[If a Bond is given by *A.* upon Articles importing a direct Aſſignment by a Huſband of his Wife (who is alſo a Party) to the Uſe of *A.* with Covenant for quiet Enjoyment, and further Aſſurance, and an Aſſignment and Bill of Sale are given by *A.* in Truſt, for the Benefit of the Wife, they ſhall both be ſet aſide; as *pro turpi Cauſa*. *Robinſon* v. *Gee*, *T.* 1749. 1 *Vezey* 25.]

[But if *A.* by Will deviſes the ſame Goods to the Wife—Q. Whether it ſhall be ſet aſide? *Ibid.*

[If a young Woman of good Character comes to live in a married Man's Family, is ſeduced by him, and is the Occaſion of Separation between him and his Wife, the Court will not give Relief on a Bill for Payment of 100 *l.* and an Annuity granted by him to the Woman. *Prieſt* v. *Parrot*, *H.* 1750. 2 *Vezey* 160.]

Tho' not charged by the Bill to be given *ex turpi Cauſâ*, if the Defendant by her Anſwer inſiſts, that it was for a Debt. 2 *Ver.* 188.

So he ſhall not be relieved, becauſe it was given without Conſideration, where it was given of his free Will. 1 *Ch. R.* 157. *Semb.* 2 *Ver.* 497. (4 D. 22.) If it was voluntarily given without Impoſition, or Surprize.

So, if an Accountant, diſcharged by an Act of Indemnity of an Account, afterwards makes up his Account, and gives a Bond for the Balance; he ſhall not be relieved againſt his Bond to the King, without the King's Conſent. *Semb. Hard.* 204.

(4 E.) Partition.

So *Chancery* will make Partition of Land by Commiſſion. 2 *P. W.* 519.

Tho' the Eſtate be in Truſt for *A.* and *B.* in Tail, and *A.* be an Infant; but the Conveyance from the Truſtees ſhall be reſpited, till the full Age of *A.* that he may join, and mutual Conveyances be executed. 2 *P. W.* 519.

So a Partition ſhall be made of a large Waſte, tho' it may be inconvenient. 2 *Ca. Ch.* 237.

And it may be decreed, tho' either Party be an Infant, or *Feme Covert*. 1 *Ch. R.* 235.

So, if a Partition is agreed between Tenants in Tail, it ſhall be decreed againſt the Iſſue. 2 *Ver.* 233.

Tho' the Agreement was by *Parol.* 2 *Ver.* 233.

But if the Land lies in *Ireland*, the Court does not decree a Partition; for a Bill for Partition is in the Nature of a Writ of Partition, which lies not for Land in another Kingdom. 2 *Ca. Ch.* 189, 214. 1 *Ver.* 421. *Vide Ante*, (3 X.)

[A Commiſſion to ſet out Lands ſhall not be granted, if Defendant denies Plaintiff's Title, and ſays he has no Lands in his Poſſeſſion belonging to Plaintiff. *Bp. Ely* v. *Kenrick*, *M.* 1732. *Bunb.* 322.]

[If there is a Miſtake (as if the Date of a Year when a Thing was done) in the Return of a Commiſſion, it may be amended by the Commiſſioners, on Motion. *Rouſe* v. *Barker*, *P.* 1728. *Bunb.* 251.]

(4 F.) Payment; What ſhall be.

IF a Man upon a Purchaſe gives Security for the Money, this amounts to Payment. *Ca. Ch.* 99.

So, if an Executor, *&c.* gives Security for a Legacy. *R. Ch. R.* 27.

If a Mortgage is proved, in which there is a Receipt for the Money, and a Condition to be void on Re-payment, with the Oath of the Party that it was paid

paid; after ten Years, it ſhall be ſufficient Proof of the Payment againſt all Perſons. *Semb. Ca. Ch.* 119.

If upon a Note or Bill by *A.* for 100*l.* to *B.* the Money is produced, and *B.* counts 50*l.* and puts it in a Bag, and throws it upon the Counter; it ſhall be Payment, and if the Money is taken away, *B.* ſhall loſe it. *R. Sal.* 507. *R.* 5 *Mod.* 398, 9.

If a Man truſts a Scrivener, *&c.* with taking a Security for Money, and the Cuſtody of the Security; Payment to the Scrivener is ſufficient. *Ca. Ch.* 93. 1 *Sal.* 157.

So Payment, after a Decree, to the Solicitor in the Cauſe, ſhall be good againſt the Plaintiff. 2 *Ca. Ch.* 38.

So, if the Security be only by Bond, and the Scrivener is intruſted with the Bond; Payment of the Principal to him, as well as of the Intereſt, upon Delivery of the Bond ſhall be good. 1 *Sal.* 157.

So, if the Mortgagee agrees, that the Mortgager ſhall pay to the Scrivener, Payment of Intereſt to him, during the Life of the Mortgagee, ſhall be good tho' he has not the Cuſtody of the Security. 1 *Sal.* 157.

And if his Executor accepts of the Scrivener Money due on the Mortgage, after the Death of his Teſtator; this warrants the Payment by him to the Scrivener. *R.* 1 *Sal.* 157.

Otherwiſe, if a Man employ a Scrivener to put out his Money, but has the Security in his own Cuſtody; Payment to the Scrivener, without cancelling the Security, does not diſcharge the Borrower. *R. Ca. Ch.* 93, 111. 1 *Ver.* 150.

So Payment of the Money to one, who uſually receives the Obligee's Money, without taking up the Bond, does not diſcharge the Obligor. *R. Ca. Ch.* 94.

So, if a Scrivener be intruſted with a Mortgage, Payment of the Principal to him upon Delivery of the Mortgage Deed does not diſcharge the Mortgagor; for tho' the Cuſtody of the Deed gives him Authority to receive the Intereſt, yet there ought to be an Aſſignment of the Mortgage to warrant the Payment of the Principal. *R.* 1 *Sal.* 157.

So a Compoſition for a Debt with a Scrivener, who uſually received the Intereſt, and made the Loan of the Money, and declared that the Obligee would be guided by him in the Compoſition, binds the Scrivener, tho' not the Obligee, he not being privy. *R.* 2 *Ver.* 128.

So, if Payment be made to a Scrivener, where the Debt was ſecured by Bond and Judgment, and the Scrivener delivers up the Bond only. *Dub.* 2 *Ver.* 265.

If a Man be indebted to *A.* upon Bond and by Contract, and pays Money to him generally, *A.* may apply it to which Debt he pleaſes. 2 *Ca. Ch.* 84.

If a Debtor pays generally a Sum, which does not exceed the Intereſt due, it ſhall be intended only for Intereſt. *Vide Ante*, (3 S. 6.——4 D. 2.)

If he be indebted upon a Judgment and Bond too, and the Purchaſer of his Eſtate pays Part generally; it ſhall be applied to the Judgment, if the Creditor does not give Notice, that he takes it for the Bond Debt. 1 *Ver.* 468.

So, if *A.* indebted upon Bond and ſimple Contract, pays generally, it ſhall be applied to the ſimple Contract Debt, which does not carry Intereſt; tho' *A.* in his Account places it to the Bond. *R.* 2 *Ver.* 607.

But if the Debtor expreſſly pays for Satisfaction of one Debt, it ſhall be Payment for that. *Ibid.*

So, if a Debtor has accounted with *A.* for both Debts, and ſo much remains for the Balance of the Account, and he afterwards pays to *A.* generally; it ſhall be applied to both Debts *pro ratâ*. *R.* 2 *Ca. Ch.* 84. 1 *Ver.* 34.

If *A.* pays generally a Sum, which may be for the Intereſt of a Bond, it ſhall be intended for that, tho' there was a Judgment in the ſame Term upon the Bond, if it was not actually entered up; and not a Payment upon the Judgment. *R. Ca. Ch.* 24.

If a Man pays Part to an Executor, and gives his Note, *&c.* for the Reſidue, it ſhall be Payment; and if the Debtor afterwards fails, it ſhall be a *Devaſtavit*. 1 *Ver.* 474.

If

If a Deviſee be bound, by a Condition annexed to the Deviſe, to pay 300*l.* to *B.* and pays it into Court, *B.* may take it, and the Deviſee ſhall be diſcharged of the Condition and Penalty. *R. Ch. R.* 61.

But if *A.* takes a Bond in the Name of *B.* and recovers againſt the Obligor, who, knowing *B.* to be only a Truſtee, without Order pays the Money to him, and he fails; the Payment does not diſcharge the Obligor. *R.* 2 *Ver.* 198.

So, if Truſtees for *A.* make a Loan, and a Bond is given to them, which takes Notice of the Truſt, and the Bond is in the Cuſtody of *A.* and afterwards an Account is ſettled with one of the Truſtees, who gives a Receipt for ſo much received for *A.* the Payment does not diſcharge the Obligor. *R.* 2 *Ver.* 539.

So Payment by the Obligor to the Obligee, after Notice that he had aſſigned the Bond, is no Diſcharge to him. 2 *Ver.* 540.

(4 G.) Perpetuity.

(4 G. 1.) In Chattels Perſonal.

CHANCERY will not allow a Perpetuity, *viz.* an Intereſt in Tail, which cannot be barred. *D. of Norf.* 35. *Vide* 3 *Ca. Ch.*

And therefore, if a Man gives 600*l.* to three Daughters, to be equally divided, and if one dies without Iſſue, her Part to go to the Survivors: If one marries, and afterwards dies without Iſſue, the Huſband ſhall recover the Part of his Wife; for it cannot be intailed. *R.* 2 *Vent.* 349.

So, if a Man deviſes the Surplus of his Perſonal Eſtate to one in Truſt for his Son, and if he dies during his Minority without Iſſue, in Truſt for others, and makes *A.* Executor during the Minority of his Son, and afterwards his Son Executor, who at the Age of eighteen Years dies without Iſſue; *R.* that the Adminiſtrator of the Son ſhall have it; for it was veſted in him when he attained the Age of 17 Years, and could not be deviſed over. 2 *Vent.* 368. *Q. per me.* *R.* 1 *Ver.* 327, 347.

So, if a Man deviſes Money to *A.* for Life, and if he has Iſſue, to his Children, and if he has no Iſſue at the Time of his Death to *B.* the Limitation to *B.* is void. *R. Pol.* 37.

If he deviſes to *A.* his Daughter and Executrix the Surplus of his Perſonal Eſtate, but if ſhe dies without Iſſue, then to go over to *B.* and directs that ſhe ſhall give a Bond, that in ſuch Caſe it ſhall go to *B.* the Limitation to *B.* ſhall be void. 1 *Ver.* 478.

[If a Man deviſes Money to his Daughter, and the Heirs of her Body, and then to another Perſon, it has not been ſolemnly determined that the Whole ſhall go to the firſt Taker. *D. per Hardwicke* C. *Phipps* v. *Steward, H.* 1737. 1 *Atkyns* 285.]

[A Limitation over of Perſonal Eſtate after the Death of the firſt Taker, *without Iſſue, generally,* is void, as being too remote. *Beauclerk* v. *Dormer, T.* 1742. 2 *Atkyns* 308.]

[Equity admits like Limitations in Perſonal, as in Chattels Real; but will carry the Limitation of a Perſonal Chattel, or the Truſt of it, no further than the Judges do legal Limitations of Terms for Years. *Ibid.*]

[The Court will not admit of a Diſtinction between Chattels Perſonal and Chattels Real, for it would introduce Confuſion. *Ibid.*]

[If a Man makes his Will, and directs his Executors to intail his Perſonal Eſtate on his Daughter, and her Iſſue, and, on Failure thereof, to divide it moietively between his two Nephews; his Intention being it be made good to his Daughter for Life, and her lawful Heirs for ever, and on their Failure, to go to his ſaid Nephews moietively; it is too remote, and the Nephews take nothing. Q. as to the Iſſue. *E. Stafford* v. *Bulkley, H.* 1750. 2 *Vezey* 170.]

So, if a Deviſe be of Houſhold Stuff, Plate, *&c.* to *A.* for Life, and afterwards to his firſt, ſecond, and other Children and the Heirs of their Bodies

as an Heir-doom, and afterwards to *B.* and his Children in the ſame Manner; *B.* ſhall not compel *A.* to give Security that they ſhall go accordingly. 1 *Ch. R.* 260.

So, if a Man deviſes his Real and Perſonal Eſtate to *A.* and the Children of his Body, and if he has no Iſſue, &c. this Deviſe giving an Eſtate-tail in the Lands to *A.* ſhall be an abſolute Diſpoſition of the Perſonal Eſtate to him. *F,g.* 320.

So, if it be to *A.* and the Heirs of his Body, and if he dies not having Heirs of his Body living, then as to that, which he does not diſpoſe of in his Life, to *B.* for Charitable Uſes; the Deviſe to *B.* is void, for *A.* had the abſolute Power over the Whole. *R.* 5 *G.* 2. *F, g.* 315.

Or, one Moiety to *A.* and the Heirs of his Body, and after his Death to his Siſter, for Default of ſuch Heirs, and the other Moiety to the Siſter for Life, and afterwards to the Heirs of her Body, and for Default of ſuch Heirs, after her Death to *A.* tho' the Moiety to the Siſter goes over after her Death, yet the Deviſe of the Moiety of the Perſonal Eſtate to *A.* ſhall be abſolute. *R. F,g.* 321.

So a Chattel Perſonal, as a Horſe, cannot be granted to *A.* during his Life, for the Grant is abſolute. *D.* 2 *Rol.* 49. *l.* 30.

It cannot be deviſed to *A.* for Life, Remainder to another. *R.* 1 *Rol.* 610. *l.* 27.

So, if a Deviſe be to *A.* of Perſonal Eſtate, and if he die not having Heirs Male of his Body, then of *ſo much as he ſhall be actually poſſeſſed of at his Death* to a Charitable Uſe; the Deviſe over is void, for it was an abſolute Deviſe, with a Power of diſpoſing to *A. Per King*, 5 *Geo.* 2. 15.

But if Rarities are deviſed to his Wife for Life, and if ſhe ſhall have a Son, to ſuch Son, and if ſhe has not a Son, or ſuch Son dies without Iſſue, to *B.* for Life, and that he leave them to *C.* his Son; If the Wife has not a Son, and *B.* dies in the Life of the Teſtator, *C.* has an Intereſt after the Death of the Wife, and ſhe ſhall be a Truſtee for *C.* *R. Ca. Ch.* 130. 2 *Ver.* 60. *Vide Poſt*, (4 W. 5.)

So, if Intereſt be deviſed, a Moiety to *A.* a Moiety to *B.* and if *A.* dies, *B.* ſhall have the Whole for his Life, and *B.* dies without Iſſue of his Body, the Principal ſhall be divided between *C.* and *D.* the Deviſe of the Principal upon ſuch Contingency ſhall be good. *R.* 2 *Ver.* 38, 60.

So, if Money be deviſed to *A.* and if ſhe dies under the Age of 21 Years, without Iſſue, to *B.* it ſhall be a good Deviſe to *B.* if *A.* dies without Iſſue, before her Age of 21 Years. *R.* 2 *Ver.* 87.

Or, to *A.* for Life, and if he dies without Children to *B.* it ſhall be a Truſt for *B.* *F,g.* 318.

Or, to his Niece, upon Truſt that ſhe ſhall take the Intereſt for her Uſe, and after her Death that the Intereſt ſhall be for the Maintenance of her Children till Age, and then the Money to be divided between the Children, and for Default of ſuch Iſſue, to *A.* If the Niece has no Iſſue, it ſhall be a Truſt for *A.* *R. and aff. in Parl. F,g.* 318.

And an Intereſt derived out of a Freehold may be limited otherwiſe than a Chattel merely Perſonal: And therefore, a next Avoidance may be granted to *A.* and his Aſſigns during the Life of *A.* in which Caſe the Aſſignee ſhall not preſent, if the Avoidance does not happen in the Life of *A.* *R.* 2 *Rol.* 49. *l.* 20.

(+ G. 2.) In Chattels Real.

* *Vide Poſt*, (4 W. 19.)

So a Term for Years ſhall not be limited to create a Perpetuity.

And the Truſt of a Term ſhall not be limited, nor the Limitation allowed in Equity, further than the Term may be limited by Law. *Per Ld. Nott.* 3 *Ca. Ch.* 28, 48.

And therefore, a Limitation of the Truſt of a Term, after the Dying of any one without Iſſue, is void. *R. D. of Norf.* 3 *Ca. Ch.* 28. 2 *Ver.* 684. *R. Jon.* 15.

[If

[If a Man deviſes Chattels Real to his Son *A.* and the Iſſue of his Body, then to his Son *B.* and the Iſſue, &c. then to *C.* &c.; the whole Intereſt veſts in *A.* and the Limitations over are void. *Fereyes* v. *Robertſon*, *P.* 1731. *Bunb.* 301.]

[If *A.* deviſes his full and whole Eſtate, Bank-ſtock, &c. to his Nephew *B.* and his legitimate Heirs, and if he dies without them to *C.*; legitimate Heirs are Heirs of his Body lawfully begotten, and the contingent Limitation is too remote, and void, unleſs Something confines it to the Time of his Death. *Barret* v. *Beckford*, *T.* 1750. 1 *Vezey* 519.]

As, if the Limitation be to a Man till *B.* dies without Iſſue, and then to *C.* the Limitation to *C.* is void. *Agr.* 3 *Ca. Ch.* 32.

Or, to *A.* and the Heirs of his Body, and afterwards to *B.* *R. per two J. Dy.* 7.

So, if a Term be limited to one and his Iſſue, and if the Iſſue die without Iſſue, Remainder to *B.* Tho' the Limitation to the Iſſue is void, yet the Remainder is alſo void, being after the Limitation of a Dying without Iſſue. *Agr.* 3 *Ca. Ch.* 29.

So, if a Term be limited in Truſt for him for Life, and afterwards for the 1ſt, 2d and 3d Sons ſucceſſively in Tail, and if he has no Son, then to the Daughter; the Limitation to the Daughter is void, tho' he never had a Son; for it depends upon a remote Contingency, the Death of the Son without Iſſue. *R.* 1 *Mod.* 115. *Agr.* 3 *Ca. Ch.* 29.

[If a Man ſeized and poſſeſſed of Real and Perſonal Eſtate, deviſes to Truſtees to pay the Profits to *A.* for Life, and if ſhe marries *B.* then after her Death to *B.* for Life, after both their Deaths to their firſt and other Sons in Tail-male, then to their Daughters, to be equally divided, for Want of ſuch Iſſue, to the Iſſue Male or Female of the Survivor, if neither leave Iſſue then to *C.* for Life, and then to the Children *D.* ſhould at his Death leave living, or his Wife be *enſient* with, that ſhall attain Twenty-one, their Heirs, Executors, &c.; this Limitation of the Perſonal Eſtate of Teſtator to the Children of *D.* cannot be maintained; for *A.* and *B.* were made Tenants in Tail, and the Limitations after that are void. *Sabbarton* v. *Sabbarton*, *M.* 8 *G.* 2. *C. T. T.* 55. *N. B.* This Deciſion is contrary to the Opinion of *B. R.* on a Caſe ſtated for their Opinion in this Cauſe by the Chancellor; where it is determined by the four Judges, that if a Term for Years had been bequeathed in the ſame Manner, the Limitation had been good. And a Decree was made accordingly, *per Hardwicke* C. in *M.* 1739. *B. R. H.* 413. *Andr.* 333. *C. T. T.* 245. 2 *P. W.* 699.]

So a Limitation of the Truſt of a Term to *A.* for Life, then to ſuch Perſon as *A.* by Deed or Will ſhall nominate, and after the Death of the Nominee, to the right Heirs of *A.* the Limitation to the right Heirs is void; for no Limitation can be after a Life not *in eſſe*. *R. Ca. Ch.* 8.

Or, if it be to *A.* for Life, Remainder to his firſt Son for Life, and if he dies without Iſſue, to his ſecond Son; the Remainder is void. *R.* 1 *Lev.* 290. 1 *Sid.* 450.

But the Limitation of the Truſt of a Term to one, and if he dies during the Term, then to another, is a good Limitation of the Remainder. *Dy.* 277. *b.*

So a Limitation to one for Life, and afterwards to twenty others for Life ſucceſſively, when all are *in eſſe* at the ſame Time, is good for all the Remainders; tho' there be a Poſſibility after a Poſſibility. *Agr.* 3 *Ca. Ch.* 29. *Ca. Ch.* 8.

So a Limitation to one for Years, and afterwards to his Son for Life, and afterwards to the firſt Iſſue Male of the Son for Life, tho' the Son had not then any Iſſue, is good; for the Limitation depends only upon the Contingency of one Life *in eſſe*. *R.* 3 *Ca. Ch.* 29.

So, if a Limitation be to *B.* and the Heirs of his Body, *quamdiu Tho.* has Iſſue of his Body, and if *Tho.* dies without Iſſue (his Wife not being *privement enſeint*) in the Life of *B.* then to *C.* The Limitation to *C.* is good upon ſuch a Contingency, which expires within the Space of one Life. *R. per Finch*, 3 *J. cont. Cont. per North, but affirmed in Parl. Duke of Norfolk's Caſe*, 3 *Ca. Ch.* 32, &c. *R. Cont.* 2 *Cro.* 459. *Jon.* 15.

So,

So, if a Limitation be for Life, and afterwards to *A.* if he be living at the Time of the Death of the Tenant for Life, but if he be dead, then to the eldeſt Son of *A.* then living, and if *A.* die without Iſſue in the Life of the Tenant for Life, then to *B.* the Remainder to *B.* is good. *R. Ca. Ch.* 132.

[If a Man deviſes a Term to *A.* for Life, Remainder to the Children *A.* ſhall leave at his Death, and if they die without Iſſue, then to *B.*; this is a good Deviſe over to *B.* *Atkinſon* v. *Hutchinſon*, *P.* 1734. 3 *P. W.* 258.]

[If a Leaſe for Years is ſettled in Truſt, to permit *A.* to receive for Life, then *B.* for Life, then to Truſtees to aſſign to the eldeſt Son of *A.* on *B.* and for Want of ſuch Iſſue of ſuch Son, to their Daughters equally; if no Iſſue, to *A.* his Heirs, Executors, *&c.*; this ſhall be conſtrued as dying without ſuch Son living at the Time of his Death, and the Remainder over to the Daughters is good. *Exel* v. *Wallace*, *H.* 1750. 2 *Vezey* 117. Affirmed by *Ld. Hardwicke*, on Appeal. *T.* 1751. 2 *Vezey* 318.]

So a Limitation to *A.* his Executors, Adminiſtrators and Aſſigns for ever, but if he die without Iſſue before 21, to *B.* ſhall be good to *B.* 2 *Ver.* 151, 2.

So, if a Limitation be to *A.* for Life, and afterwards to his firſt Son for the Reſidue of the Term, and in Default of his Iſſue, to the ſecond and other Sons, and in Default of Iſſue Male to his Daughter; if there never be a Son, the Limitation to the Daughter ſhall take Effect. *R.* 2 *Ver.* 600. 1 *Sal.* 156. *F,g.* 320. *R.* 2 *P. W.* 618.

[If a Man by his Will gives his (Leaſehold) Houſe, Pictures and Statues, to his Wife for Life, and if ſhe marry again to his eldeſt Son, and his Iſſue, *&c.* and if Teſtator leave no lawful Iſſue then to *A.* and his Iſſue; and by another Clauſe declares that his eldeſt Son and his Iſſue, and if he leave none, his eldeſt Daughter, and her Iſſue, ſhall have his whole Eſtate Real and Perſonal, except what he has given to his Wife, or to other Uſes; and by another Clauſe, that if no Son or Daughter ſhall leave a Child behind them, then the ſaid *A.* and his Iſſue ſhall have all his Eſtate, Real and Perſonal, juſt in the ſame Manner, and with the ſame Reſtrictions and Exceptions, as to his Wife; the Limitation to *A.* is not too remote, and he ſhall have the Houſe, Pictures and Statues. *Sheffield* v. *E. Orrery*, *M.* 1745. 3 *Atkyns* 282.]

If a Limitation be of the Truſt of a Term, to one and the Heirs of his Body, this gives the whole Term to him, his Executors and Adminiſtrators.

So, if the Remainder of a Term be limited to ſuch Perſon as *A.* ſhall nominate, the Nominee has the whole Term to him, his Executors and Adminiſtrators, tho' his Executors are not named. *Ca. Ch.* 8.

(4 G. 3.) In an Eſtate of Inheritance.

So an Eſtate of Inheritance cannot be limited in ſuch Manner as may introduce a Perpetuity.

And therefore, if a Man by Deed or Will limits his Eſtate in Uſe, or by way of Truſt to *A.* in Tail, and afterwards to *B.* in Tail, with divers Remainders over, and annexes a Condition or Proviſo, that if *A.* attempts to alien, his Eſtate ſhall ceaſe, as if he was dead, *&c.* ſuch Condition is void. *Co. Lit.* 377. *R.* 1 *Co.* 85, *Corbet*. *D.* 1 *Co.* 130. *R. Mo.* 470, 601. *R.* 6 *Co.* 40. *R.* 10 *Co.* 41. *R.* 2 *Cro.* 697. *R. Mo.* 592. *Cro. El.* 378, 9.

So, if he obliges every *Ceſtuy que Uſe* to give a Statute, that he will not alien, *Chancery* will decree ſuch Statutes to be cancelled; for by ſuch Means a Perpetuity would be introduced. *R. Mo.* 810.

So, in any Caſe, if the Limitation be in ſuch a Manner, that all, who have Intereſt, by joining in a Conveyance cannot paſs or bar their Intereſt, it will be a Perpetuity. *Ca. Ch.* 213.

If a Deviſe be to *A.* for Life, and afterwards to his Son for Life only, and in Default of ſuch Iſſue, to *B.* for Life, and ſo to twenty others for Life, without diſpoſing of the Inheritance; after all the Lives *in eſſe*, the Limitation ſhall be to the firſt Son of *A.* and the Heirs of his Body, *&c.* otherwiſe a Perpetuity would be introduced. *R. Eq. Ca.* 128.

[If

[If a Man makes his Will, "I make *A.* my ſole Heir and Executrix, if ſhe "dies without Iſſue, *then* to *B.* he to pay *C.* 5000 *l.* and to *D.* and her Daughter "100 *l.* each, and *A.* to keep *D.*;" and *A.* levies Fine, and ſuffers Recovery; the Limitation over is void, and cannot be confined to *A.*'s dying without leaving Iſſue at her deceaſe. *Beauclerk* v. *Dormer*, *T.* 1742. 2 *Atkyns* 308.

[If by Marriage-articles *A.* covenants to ſettle 200 *l.* on his Wife for Life, then to Truſtees to preſerve, *&c.* for his firſt Son, then to the firſt Son of ſuch firſt Son, with Remainders over; the firſt Son takes an Eſtate-tail, for one not in being cannot take leſs. *Hucks* v. *Hucks*, *T.* 1754. 2 *Vezey* 568.]

[Whether a Settlement, impowering Truſtees from Time to Time, at the Requeſt of Tenant for Life in Poſſeſſion on the Birth of a Son, to reduce the Eſtate-Tail of ſuch Son to an Eſtate for Life, was agitated on the Duke of *Marlborough*'s Will, but never determined. *Ibid.*]

(4 G. 4.) Or Freehold.

So, if a Man covenants to ſtand ſeiſed to the Uſe of *A.* for Life, and afterwards to the firſt Son of *A.* for Life, and afterwards to the firſt Son of the Body of ſuch firſt Son for Life, then to ſeveral others for Life ſucceſſively; all the Remainders, which are not ſettled in ſome Perſon during the Life of *A.* are void. *Semb. Mo.* 371.

So a Deviſe to *A.* and his eldeſt Heir Male, and ſo from Heir Male to Heir Male for Life for ever, ſhall be void to all who do not come *in eſſe* during the Continuance of the Eſtate in Poſſeſſion. *R. Mo.* 371.

So a Deviſe to *A.* and afterwards to every one who ſhall be his Heir, is good to the next Heir in Remainder only. *R. Mo.* 372.

But an Eſtate may be limited to ceaſe upon a Contingency, which expires within the Compaſs of a Life, tho' ſuch Contingency cannot be barred; as, if an Eſtate be deviſed to *A.* and his Heirs, with a Proviſo that if *A.* dies without Iſſue, in the Life of *B.* the Eſtate ſhall go to *B.* and his Heirs; the contingent Deviſe to *B.* is good, tho' it cannot be barred by a common Recovery. *R. Cro.* 592. *Pell and Brown.*

So, if Land be limited in Truſt for *A.* for Life, and afterwards for *B.* for Life, and afterwards for their Iſſue, and afterwards for the Heirs of *A.* with a Proviſo, that if *A.* and *B.* die, not having Iſſue living at the Time of the Death of the Survivor, and the Heirs of *B.* pay 4000 *l.* to the Heirs of *A.* within a Year after the Death of the Survivor not having Iſſue living, then the Eſtate in Fee to *A.* ſhall ceaſe, and the Fee ſhall be to the Heirs of *B.* the Limitation ſhall be good; for it does not make a Perpetuity. *R. Cont. in Chanc. by Lord Chanc. Somers, between Sir Evan Lloyd and Godolphin and Wife againſt Sir Richard Carew and Tremain, and the Bill diſmiſſed; but the Diſmiſſion was reverſed upon an Appeal in Parliament*, 13 *Jan.* 1697. *(Reported Comyns's Reports* 20. *Ca. Parl.* 137.)

(4 G. 5.) A Term that attends an Inheritance.

A Term for Years may be intailed, if it be limited to attend the Inheritance. 1 *Vent.* 194. *Vide Poſt*, (4 W. 19, 20, 22.)

Tho' it be by ſeveral Deeds, and executed at ſeveral Times. *R.* 1 *Vent.* 195.

So, if a Term be created for a particular Purpoſe, when that Purpoſe is anſwered, the Term ſhall be decreed to attend the Inheritance: As, if the Term be for raiſing Portions; when they are raiſed the Term ſhall attend the Inheritance. 1 *Sal.* 154.

So, if a Termor purchaſe the Inheritance, his Term ſhall be attendant. 1 *Sal.* 154.

If a Term be created by a Woman ſeiſed in Fee, for a Proviſion for the Children of a firſt Marriage, and afterwards in Truſt for her, her Executors or Adminiſtrators, and her Huſband dies without Iſſue, and ſhe takes a ſecond Huſband; he ſhall not have the Term, but it ſhall be attendant upon the Inheritance. *R.* 1 *Sal.* 154. *Vide Ante*, (2 M. 9.)

If a Woman recovers Dower, and a Purchaſer with Notice has a Term prior to the Marriage aſſigned to attend the Inheritance, ſhe ſhall not have Relief in Equity. *R. and aff. in Parliament*, 1 *Ver.* 357. *Ca. Parl.* 69. *Eq. Abr.* 219.

If a Purchaſer of the Inheritance of *Ceſtuy que Truſt* in Tail, has a Recovery by *Ceſtuy que Truſt* in Tail, and a prior Term aſſigned for his Protection; the Term ſhall be a Security to the Purchaſer againſt him in Remainder after the Eſtate-tail. 1 *Ch. R.* 245.

(4 H) Power.

(4 H. 1.) When aided, tho' not purſued.

(4 H. 1.) If it be for Payment of Debts. *Vide Poiar*, (A. 1.)

IF a Man has a Power to make Leaſes, and he for valuable Conſideration makes a Leaſe, but not purſuant to his Power, *Chancery* will relieve. 1 *Ch. R.* 185.

So, where a Man having a Power to make a Leaſe in Poſſeſſion, made a Leaſe to commence at a future Day (which is void by Law) for Payment of Debts, for which the Leſſee was engaged with the Leſſor, which was enjoyed by the Leſſee for many Years, and then the Leſſee died without other Aſſets, the Leſſor was decreed to make the Leaſe good to a Creditor of the Leſſee, for Money which came to the Uſe of the Leſſor; tho' the Leſſor pleaded, that the Leſſee was alſo indebted to him. *R. Ca. Ch* 10. 1 *Ch. R.* 185.

So, if a Man has a Power to make a Jointure, but the Execution thereof is deficient in any Circumſtances, it ſhall be aided in *Chancery*. 2 *Ca. Ch.* 30.

So, if a Man has a Power to make a Leaſe for ten Years, and makes it for twenty, it ſhall be good in Equity for ten Years. *Ca. Ch.* 23. 3 *Ch. R.* 11

So, if a Man, in any Caſe, has a Power to create an Eſtate, *&c.* and does it for Payment of Debts, but the Power is not purſued, it ſhall be aided in Equity. *Per Treby*, 3 *Ca. Ch.* 89.

(4 H. 2.) For Proviſion for younger Children. *Vide Ante*, (3 Z. 4)

So, if a Man for Proviſion for younger Children (having a Power to charge Land with 500 *l.* gives Inſtructions for a Conveyance of other Land to raiſe Portions, and, if this was not ſufficient, to raiſe the Reſidue upon that Land, but dies before the Conveyance made; that Land ſhall be charged with the Reſidue, under 500 *l.* againſt the Heir, tho' the Circumſtances of the Power were not purſued. *R. Ca. Ch.* 264.

So, if a Man who has a Power to charge Land, *&c.* charges it for a Proviſion of younger Children; tho' the Power be not purſued, it ſhall be helped in Equity. *Per Treby*, 3 *Ca. Ch.* 89, 91, 92. 2 *P. W.* 490.

So, if a Termor limits the Term to Truſtees for ſuch Perſons as he ſhall nominate, and he names *A.* to receive the Profits for Payment of Legacies; if his Power does not extend to give an Intereſt to the Executor or Adminiſtrator of *A.* it ſhall be ſupplied out of his Eſtate, otherwiſe the Legatees, *&c.* upon the Death of *A.* would be defeated. *R. Ca. Ch.* 9.

So, if a Term to raiſe Portions for younger Sons by way of Uſe be void, it ſhall be aided. 3 *Ca. Ch.* 91. *R. Cont. Ca. Ch.* 160.

So a Power for the Benefit of younger Children ſhall be aided, tho' the Settlement was voluntary. *Ca. Ch.* 263. *Cont. Ca. Ch.* 160.

[If *A.* has a Power to diſpoſe of an Intereſt in ſuch Shares as he thinks fit among his Children, and for want of Appointment, to his right Heirs, and he by Will delegates it to his Wife, to diſpoſe in ſuch Shares as ſhe thinks fit, between his Son and Daughter, and for want of Appointment, in equal Shares to them; this is a good Appointment to the two Children, in equal Shares; for *A.* could not delegate his Power. *Ingram* v. *Ingram*, *M.* 1740. 2 *Atkyns* 88.]

[Where there is a Power to charge an Eſtate with a groſs Sum, it implies a Power to charge it with Intereſt. *Boycot* v. *Cotton*, *M.* 1738. 1 *Atkyns* 552.]

(4 H. 3.) For the Aid of a Purchaſer

So, if a Power be not purſued, there ſhall be Relief in Equity, in Behalf of a Purchaſer. *Per Treby*, 3 *Ca. Ch.* 89.

Or, in Aid of the Wife upon Marriage Articles. *Semb.* 2 *Ca. Ch.* 28.

So

So there ſhall be Relief in Equity, when the Power is not purſued by reaſon of any Fraud, or Accident; as, if a Man be prevented from purſuing ſome Circumſtances by Sickneſs, &c. *Per Treby*, 3 *Ca. Ch.* 89. *Per Holt ibidem* 109. (4 H 4.) If it be not purſued by Reaſon of Fraud, or Accident.

(4 H. 5.) When the Execution of a Power ſhall be made by the Court.

So, if a Man covenants to make a Jointure on his Marriage, and has not any Eſtate, which can be ſettled, but only a Power, before the Execution whereof he dies; the Settlement ſhall be decreed out of his Power, if the Bill be proper. *Semb.* 2 *Ca. Ch.* 28, 30. *Per Maſter of the Rolls, Earl of Cov. Caſe* 12.

So, if Land be deviſed to an Executor, to ſell for Payment of Portions to younger Children, and the Executor dies before Sale; the Heir ſhall be decreed to ſell. *R. upon Demurrer, Ca. Ch.* 35. *Vide Ante*, (3 A. 6, 7.)

So, if *A.* has a Power to make a Jointure, and by Articles on his Marriage, and on Payment of a Portion, covenants to make a Settlement of 500*l. per Ann.* for a Jointure purſuant to his Power, and dies before the Settlement made; he in Remainder ſhall be decreed to execute his Power. *R.* 1724. *Earl of Coventry's Caſe, Fra.* 20. *Eq. Ca.* 160. *Vide Eq. Abr.* 348.

So, if a Truſtee covenants to execute his Power and does not do it; it ſhall be decreed. 2 *Ver.* 465.

So, if a Father, after Marriage, ſettles his Eſtate, Part for a Jointure, and the Reſidue upon his Iſſue Male, with a Power to charge 500*l.* for younger Children, and covenants to do it, but dies before he has charged it; it ſhall be decreed by the Court; for the Covenant amounts to an Execution of the Power. *Per Ld. Somers, Eq. Ca.* 167.

So, if an Infant having a Power to ſettle a Moiety of his Eſtate for a Jointure, and upon his Marriage, he and his Mother covenant by Articles to ſettle 100*l. per Ann.* for a Jointure; it ſhall be decreed. *Per Cowper, Eq. Ca.* 167.

So, if *B.* in Remainder, after the Death of *A.* without Iſſue, has ſuch a Power, and covenants, upon his Marriage, to execute it, and *A.* afterwards dies without Iſſue, and *B.* ſurvives and does not do it. *R. Eq. Ca.* 167.

(4 H. 6.) When a defective Execution ſhall be aided.

So, if an Intent to make Execution of a Power be evident, tho' all Circumſtances are not obſerved, it ſhall be aided; as, if a Man has a Power to charge Land with 500*l.* by Deed or Will under his Hand and Seal, and he by his Will under his Hand deviſes 500*l.* but there is no Seal, it ſhall be aided. *R. Ca. Ch.* 263. *Earl of Cov. Caſe* 5. *Vide Poſt*, (4 H. 7.)

If a Man has a Power to limit an Eſtate to his Children, by Writing before two Witneſſes, and by Will, executed before two Witneſſes, deviſes a Rent to his Children; tho' it is not a good Deviſe for want of three Witneſſes, it ſhall be a good Execution of the Power in Equity. 3 *Ca. Ch.* 69.

So, if he has a Power to raiſe Portions by Deed, or Will, executed in the Preſence of three Witneſſes, and he does it by a Will, to which there are only two Witneſſes. *Eq. Ca.* 168.

[If Father Tenant for Life, and his Son in Tail agree to charge Land with a Sum for younger Children after Father's Death, as he by Will duly executed ſhall appoint, and he appoints by Will, executed before two Witneſſes, it is good, for nothing paſſed from him; otherwiſe had it been the Owner of the Eſtate. *Jones* v. *Clough, T.* 1751. 2 *Vezey* 365.]

So, if he has a Power to make a Jointure by Deed under his Hand and Seal, and he by his Will under his Hand and Seal gives the Eſtate to his Wife for Life. *R.* 2 *P. W.* 490.

If, having a Power to make a Jointure to the Amount of 1200*l. per Ann.* he covenants to do it, and afterwards makes a Jointure of Lands ſuppoſed to be of that Value, but which are not; it ſhall be ſupplied. *R. Eq. Ca.* 167.

[If one has a Power to ſettle a Jointure of 4000*l. per Annum*, without Deduction or Abatement for any Taxes, Charges or Impoſitions, impoſed or to be impoſed,

impoſed, parliamentary or otherwiſe; and Articles are made, that he will ſettle 3000 *l. per Annum* over and above Reprizes, purſuant to the Power, and a Settlement is made of Lands, with Covenant that the Lands ſhall produce 3000 *l.* clear of all Taxes and Prizes, and there appears afterwards a Deficiency; the Jointreſs ſhall have the Deficiency made good, and is intitled to ſuch a Jointure as at executing the Aricles was worth 3000 *l. per Annum*, free from all Incumbrances, Rent-charges, Rents-ſeck, Fee-farms, Quit-rents, Annuities, Stipends to Miniſters, Penſions and Procurations, and from all parliamentary Taxes or Impoſitions, of ſuch Nature and Kind as were in being at the Time of executing the ſaid *Power*, and particularly from the Land-tax then in being. *Marchioneſs Blandford* v. *Dutcheſs Marlborough*, *P.* 1743. 2 *Atkyns* 542.]

[If *A.* has a Power to ſettle a *Jointure*, (*i. e.* to convey a legal Eſtate) on any after Wife during her Life, not exceeding 600 *l. per Annum*, and he in Execution of it conveys the Lands to *Truſtees*, (not to the Wife) to raiſe *clear* 300 *l.* and by another Deed 300 *l.* more clear of Taxes, *&c.* this Execution is void in Law and Equity; but the Court will decree the Truſtees to convey to the Wife a Jointure not exceeding 600 *l. per Annum*, liable to Taxes, *&c.* *Hervey* v. *Hervey*, *M.* 1739. 1 *Atkyns* 561.]

[Equity will ſupply a defective Execution of Powers, in Caſe of younger Children, and Proviſion for a Wife, as well as in Favour of Purchaſers or Creditors. *Ibid.*]

[And it will aid, if intended for Proviſion, whether voluntary or not. *Ibid.*]

[It is not neceſſary that the Wife or Child applying be totally unprovided for. *Ibid.*]

[A Perſon who has not the Proviſion ſtipulated for, muſt be conſidered as abſolutely unprovided for, *Ibid.*]

So, if *A.* has Power to charge a Term with Portions, and he raiſes a new Term for thoſe Portions, which is void in Law; the prior Term ſhall be charged againſt a Purchaſer, tho' the Portions were voluntary. *R. Ca. Ch.* 290.

If he has a Power to charge 2000 *l.* upon Land, and makes a Mortgage for 2000 *l.* generally; it ſhall be taken as an Execution of the Power. *Semb. Ca. Ch.* 104.

If a Settlement be with a Power, that, if there be a Daughter, and he in Remainder does not pay 2000 *l.* to the Daughter, at her Age of ſixteen Years, at one Payment, the Truſtees may diſtrain for the Portion with Damages; the Truſtees ſhall be decreed to ſell, tho' no Power of Entry, or Sale is given. *R.* 2 *Ver.* 2.

[If a Man ſufficiently deſcribes the Eſtate he has a Power to charge, it is bound, tho' he does not refer to the Deed out of which the Power riſes. *Probert* v. *Morgan*, *P.* 1739. 1 *Atkyns* 440.]

(4 H. 7.) When it ſhall not be aided.

(4 H. 7.) If the Intent of the Power is not purſued.

But when the Intent of the Power is not purſued, it ſhall not be aided in Equity; as, if a *Feme Sole* makes a Settlement upon herſelf for Life, Remainder over, with Power to make Leaſes for three Lives, while ſhe is *Sole*; if ſhe marries, and the Huſband and Wife make a Leaſe for three Lives, it ſhall not be aided in Equity. *R. Ca. Ch.* 18.

[If for providing for ſuch younger Children as Father and Mother ſhall leave unmarried or unprovided for, Truſtees are to raiſe 1000 *l.* to be paid *ſuch* younger Children, in ſuch Manner and Proportion as they ſhall appoint, and in Default to *ſaid* younger Children, or *ſome* of them as Survivor ſhall appoint, and in Default, equally; and Father ſurviving, and very old, appoints 50 *l.* to *A. to pay a Debt which he owes*, 125 *l.* to *B.* 825 *l.* to *C.* and nothing to *D.* it is void; as contrary to the Intent of the Power, which is to provide for all unprovided for, and annexing a Condition he had no Power to annex. *Burliegh* v. *Pearſon*, *T.* 1749. 1 *Vezey* 281.]

If *A.* has a Power to make a Limitation of Lands to ſuch a Purpoſe by his Will, a Draught of a Will not executed, ſince the Statute of 29 *Car.* 2. 3. ſhall not be aided. *Per Gilbert, E. of Cov. Caſe, Fra.* 5.

If a Man gives the Reſidue of his Eſtate to his Wife, with Power to diſpoſe thereof with the Concurrence of his Truſtees; if ſhe by her Will makes a Diſpoſition without his Truſtees, it ſhall not be decreed. *R.* 2 *Ver.* 723.

[If a Widow by her Huſband's Will has Power to appoint 6000 *l.* among her Children, ſhe cannot give to Grandchildren, nor give a diſcretionary Power to another to appoint. *Alexander* v. *Alexander, T.* 1755. 2 *Vezey* 640.]

[If ſhe gives Part to *C.* for Life, and then to her Children; *C.* has it for Life, and then it falls into the Reſidue. *Ibid.*]

[If ſhe gives Part to Truſtees to apply it as they think fit, for the Support of her Son *F.* his Wife and Children, but not to pay his Debts; *F.* is intitled to the Whole, and it muſt be ſubject to his Debts. *Ibid*]

If the Power be to diſpoſe by Deed or Will, it muſt be an effectual Will, ſigned by three Witneſſes, *&c.* *R.* 1 *P. W.* 741. 2 *P. W.* 259.

Tho' the Deviſe be of an Eſtate to a Charity. 2 *P. W.* 260.

Or, of the Truſt, or Equity of Redemption of a Copyhold Eſtate. 2 *P. W.* 261. *

* *Vid. the Note ibid. Cont.*

So, if Tenant in Tail, with a Power to make a Charge upon Land for 2000*l.* by Deed or by his Will, makes a Mortgage for 2000*l.* by Leaſe and Releaſe and dies; the Iſſue in Tail, who claims by Marriage Settlement, ſhall not be compelled in Equity to confirm the Mortgage, or to execute ſuch an Eſtate to the Mortgagee, as might have been executed by his Anceſtor, according to his Power. *R. Ca. Ch.* 104. 1 *Ch. R.* 275.

(4 H. 8.) Nor, where it was not the Party's Purpoſe to execute his Power.

If a Man, having a Power of Revocation, in a Paſſion breaks the Seal, but afterwards delivers the Deed to the Truſtees to be preſerved to the ſame Uſes; it is no Revocation. *R.* 3 *Ca. Ch.* 69, 70.

So a Non-execution of his Power ſhall never be aided. 2 *P. W.* 490.

So, if the Power be, that *A.* may raiſe ſo much Money, *&c.* and *A.* does nothing towards executing it; the Court will not execute it, tho' it ſeems reaſonable in Aid of Creditors. 2 *Ver.* 465.

Nor, if he directs a Deed to be prepared for ſuch Purpoſe, but does nothing more, and neither ſigns, or executes it; for his Intention does not appear to be compleat, and it was at his Election to raiſe it or not. *E. of Cov. Caſe* 16.

So, if a Power, created by a voluntary Conveyance, be not well purſued, it ſhall not be aided in Equity; as, if a Man by a voluntary Settlement gives an Eſtate to his Son for Life, with a Power to make an Appointment to a younger Son, ſo that it commence after the Death of his Wife, and he makes an Appointment to commence after the Death of himſelf and Wife. *R. upon Demurrer, Ca. Ch.* 160.

(4 H. 9.) If the Power was created by a voluntary Settlement, and executed voluntarily. *Vide Poſt,* (4O. 7.)

Yet a Power to raiſe Portions for younger Children has been aided in Equity, when the Circumſtances were not purſued, tho' the Settlement was voluntary. *Ca. Ch.* 161, 263. *Vide Ante,* (4 H. 2.)

So a Power, created by a voluntary Settlement, has been aided, (when it was not purſued) againſt a Perſon, who claimed under the ſame Settlement. *Ca. Ch.* 263, 4.

Prerogative.

Vide Title *Prærogative.*

Preſentation to a Church.

Vide Eſgliſe, (H. 1, &c.)

Privilege.

Vide Title *Privilege.*

Proceſs.

[*Vide Ante*, (D. 1.)—*Vide* Title *Proceſs.*

(4 I.) Purchaſe.

(4 I. 1.) What ſhall be a Purchaſe.

Vide Ante, (2 C. 2.—2 T. 5, &c.)

IF there are Articles for a Purchaſe, the Vendor ſtands ſeiſed in Truſt for the Purchaſer, before a Conveyance executed. *Ca. Ch.* 39. 2 *P. W.* (629.)

And if the Purchaſer deviſes the Land, it ſhall be decreed in Equity. *R. Ca. Ch.* 39. *D. Fra. Earl of Cov.* 4. 2 *Ver.* 680. *Eq. Ca.* 78. * 2 *P. W.* (631.)

* 2d Part of 2 *Mod. Ca.*

So, if a Man purchaſes a Copyhold and has a Surrender, but the Vendor dies before the Admittance of the Surrenderee. *Ca. Ch.* 39. 3 *Ch. R.* 4.

So, if a Man agrees to ſell or make a Mortgage for Money; he ſtands ſeiſed in Truſt for the Vendee. *Ca. Ch.* 171.

If a Man agrees to pay 800*l.* for four Houſes in *A.* which before a Conveyance are deſtroyed by an Earthquake; Payment ſhall be decreed. *R.* 2 *Ver.* 280.

Tho' *A.* covenants for *B.* to pay, and has not Aſſets of *B.* in his Hands. 2 *Ver.* 280.

So, if by Marriage-Articles, Money is agreed to be veſted in the Purchaſe of Lands; it ſhall be conſidered as a Purchaſe, and decreed to him who will be intitled to the Land. *R.* 2 *Ver.* 101. *R. Eq. Abr.* 175.

* 2d Part of 2 *Mod. Ca.*

So, if *A.* gives a Bond to ſurrender a Copyhold to *B.* he ſhall be deemed a Truſtee for *B.* *R. Eq. Ca.* 62. *

If *A.* agrees for a Purchaſe with *B.* it ſhall be decreed, if *B.* can make a Title at the Time of the Decree or the Report, tho' he had not a Title at the Time of the Contract. 2 *P. W.* (630.)

[If *A.* mortgages an Eſtate to *B.* who mortgages it to *C.* for 200*l.* Charity-money, directed to be laid out in Purchaſe of Lands in Fee, and *C.* leaſes the Eſtate to *A.*'s Heir for 5000 Years, for 12*l. per Annum* the three firſt Years, and 10*l. per Annum* for the Remainder of the Term, and if the 200*l.* repaid in the three firſt Years, the Premiſſes to be re-conveyed; if it is not ſo paid, it ſhall be deemed an abſolute Purchaſe. *Miller* v. *Lee*, *H.* 1742. 2 *Atkyns* 494.]

(4 I. 2.) Who ſhall be a Purchaſer.

Every one, who comes to an Eſtate in Land for a valuable Conſideration *bonâ fide* paid, ſhall be a Purchaſer; as, if Land is ſettled upon a Perſon, for Money paid, in Fee, in Tail, for Life, or for Years.

Or, in Conſideration of a Marriage to be had.

So, if a Leaſe be, rendring full Rent, without Fine; the Leſſee ſhall be a Purchaſer, and ſhall avoid a voluntary Settlement. 2 *Ver.* 327.

So a Woman, who has an Agreement for a Jointure, ſhall be a Purchaſer, if the Portion is paid. *R. Ca. Ch.* 100.

So, if the Father covenants to pay it, tho' it does not appear to be paid; for Security is Payment. *R. Ca. Ch.* 99. *Vide Ante*, (3 Z. 3.)

So, upon an Agreement for a Jointure, the Iſſue of the Marriage, claiming Lands by ſuch Agreement, ſhall be Purchaſers. *R. Ca. Ch.* 255.

So, if a Tenant in Fee agrees with *A.* and *B.* to take them Partners for 21 Years in Mines, which they are to ſearch for and work, and he to have a Tenth of

of the Profit; *A.* and *B.* having laid out 120*l.* in the Search of a Mine, are in the Nature of Purchaſers, and ſhall avoid a voluntary Settlement. 2 *Ver.* 327.

If the Huſband makes a Jointure, and it is agreed, that he ſhall have the Portion of his Wife, but he dies before any Aſſignment, *&c.* to him; it ſhall be decreed to the Repreſentative of the Huſband; for he is in the Nature of a Purchaſer. *F,g.* 211.

So, if Tenant for Life, with Power to make a Jointure, marries and dies before the Jointure is compleated; the Wife ſhall have the Privilege of a Purchaſer. *Ibid.*

But if a Woman, having Land conveyed to her, takes a Huſband, who makes a Jointure, but no Settlement is made or agreed to be made of the Wife's Land; the Huſband ſhall not be relieved, as a Purchaſer of thoſe Lands. *F,g.* 212, 217.

(4 I. 3.) When a Purchaſer ſhall be relieved againſt Incumbrances.

A Purchaſer *bonâ fide* may by an old Mortgage, Statute or Judgment, *&c.* protect himſelf againſt a meſne Incumbrance. *R. Ca. Ch.* 36. *Vide Ante,* (I. 5.)—(4 A. 4, 10.) *Ca. Ch.* 267. *Vide Poſt,* (4 I. 11.) *Vide Covin,* (B. 3.)

And if he is a Purchaſer without Notice, he may plead that to a Bill for Diſcovery of his Title. *Vide Ante,* (I. 1.)

And if he has Deeds in his Hands, which ſhew a Title in another, he need not diſcover them. *R. Ca. Ch.* 69.

Tho' obtained by Artifice. 2 *Ver.* 159.

So he need not diſcover where his Land lies, or who is the Tenant, in order to have Execution of a Judgment, Statute, *&c.* *R.* 2 *Ca. Ch.* 47, 48.

So a Purchaſer ſhall have the Benefit of an old Mortgage, *&c.* aſſigned for him, tho' nothing is due upon it. *R.* 2 *Ver.* 159.

If the Vendor was ſeiſed in Truſt for another; a Purchaſer for a valuable Conſideration, without Notice of the Truſt, ſhall not be ſubject to it. 3 *Ca. Ch.* 123. *Vide Uſes,* (D. 2.)

So, if a Truſtee, in Conſideration of a Marriage with his Daughter, covenants to ſtand ſeiſed to the Huſband for his Life, and afterwards to his Daughter, not having Notice of the Truſt: Neither the Huſband, nor the Wife ſhall be ſubject to the Truſt. *Semb.* 2 *Rol.* 781. *l.* 15.

If a Man articles for making a Marriage-Settlement, and afterwards mortgages the Eſtate to *B.* The Mortgagee without Notice ſhall enjoy againſt a Settlement ſubſequent. *Semb.* 2 *Vent.* 343.

If a Settlement is for Payment of Debts, where no Debt is expreſſed, nor Creditor a Party; a Purchaſer without Notice ſhall not be ſubject, nor ſhall a Creditor have Relief againſt him. *Ca. Ch.* 249.

If *A.* purchaſes, having Notice of an Incumbrance, and afterwards ſells to *B.* without Notice; *B.* ſhall have Relief, but *A.* ſhall make Satisfaction out of his Purchaſe-Money. *R.* 2 *Ver.* 384.

If a Purchaſer of a Term erects new Buildings, he ſhall have Relief againſt a dormant Title, of which he had no Notice, *pro tanto* as he expended. *R.* 2 *Lev.* 152.

If a Bill is for the Examination of Witneſſes to a Will *in perpetuam rei Memoriam*; it ſhall not be decreed againſt a Purchaſer without Notice. *Eq. Abr.* 333.

So, if a Purchaſer gives Security for the Purchaſe-Money, and before Payment the Land is evicted; the Purchaſer ſhall be relieved from his Security for the Payment. *R.* 2 *Ca. Ch.* 19.

Tho' the Covenant in the Deed of Purchaſe was only againſt all claiming under the Vendor, and the Eviction was by a Title *Paramount*. *R.* 2 *Ca. Ch.* 19.

So a Purchaſer ſhall be aided againſt him, who, having Notice of his own Title, ſuffers the Purchaſe to proceed, without giving Notice to the Purchaſer. *R. Eq. Ca.* 37. * *Vide Poſt,* (4 W. 28.)

* 2d Part of 2 *Mod. Ca.*

[If a Mortgagee preſent at a Treaty for Marriage of Mortgagor's Son, conceals his Mortgage, and aſſures the Father that he will truſt his perſonal Security, the Son,

Son, Wife and Iſſue, ſhall hold the Lands againſt the Mortgagee. *Berrisford* v. *Milward*, *T.* 1740. 2 *Atkyns* 49.

[A Purchaſer for a full Conſideration ſhall not be prejudiced by the Miſtake or Ignorance of ſome of the Parties to the Conveyance, of their Claim under a Marriage-ſettlement. *Malden* v. *Menil*, *P.* 1737. 2 *Atkyns* 8.]

(4 I. 4.) When not.

But if a Purchaſer has Notice of a Truſt, he ſhall be charged with it in Equity. *R.* 2 *Ver.* 384. *Vide Uſes*, (D. 2.)

So, if *A.* articles for the granting of a Leaſe, and afterwards ſells the Land to *B.* for a valuable Conſideration, who has Notice of the Agreement; *B.* ſhall be decreed to grant the Leaſe. *R.* 2 *Rol.* 781. *l.* 10. *Lane* 60.

[If Tenant for Life covenants to renew a Leaſe, and his Son Tenant in Tail, and intitled to his Eſtate, afterwards covenants alſo, and then ſells the Eſtate to *A.* who has Notice of ſuch Covenant, and an Allowance for it in the Purchaſe; *A.* is bound to renew. *E. Brook* v. *Bulkeley*, *T.* 1754. 2 *Vezey* 498.]

So, if Land is deviſed to be ſold for Payment of Debts; a Purchaſer, with Notice that the Debts were before paid, or that the Perſonal Eſtate was ſufficient for the Payment, ought to re-convey to the Heir. *R.* 2 *Ca. Ch.* 116. 1 *Ver.* 487.

If *A.* has a Debt due to him by Statute from *B.* and upon a Mortgage by *B.* engroſſes the Mortgage-Deed, without diſcovering his Statute; he ſhall not extend his Statute againſt the Mortgagee. 3 *Ca. Ch.* 85.

If the Deviſee of a College Leaſe, in Truſt for his Son, renews in his own Name, and afterwards mortgages to *B.* who had Notice of the Will; *B.* ſhall take it, ſubject to the Truſt. 1 *Ver.* 486.

If the Lord of a Manor leaſes a Tenement to his Daughter for 99 Years, and afterwards ſells the Manor to *B.* who has Notice and takes a Bond that the Daughter ſhall ſurrender at her full Age; *B.* ſhall take, ſubject to the Leaſe, which was an Advancement for the Daughter. 1 *Ver.* 467.

If, to a Bill, the Defendant pleads, that he is a Purchaſer for a valuable Conſideration; the Plaintiff may by a new Bill charge, that he was a Purchaſer with Notice, and require an Anſwer of the Defendant, to that. *Ca. Ch.* 252.

[A Man cannot defend himſelf in Equity as a Purchaſer for a valuable Conſideration, under Articles only: but if injured, muſt ſue at Law on the Covenants. *Brandlyn* v. *Ord*, *M.* 1738. 1 *Atkyns* 571.]

[The Court will not decree a voluntary Conveyance to be delivered up to a Purchaſer on valuable Conſideration, unleſs Fraud appears. *Oxley* v. *Lee*, *H.* 1736. 1 *Atkyns* 625.]

[If the Purchaſer of Lands in *Middleſex* knows they are charged with an Annuity, he ſhall pay it, tho' the Grant was not regiſtered according to 7 *An. c.* 20. *Cheval* v. *Nichols*, *in Sc. M.* 1 *G. Str.* 664.]

[If a Man after Marriage, in Conſideration of 100 *l.* paid by his Wife's Mother, ſettles 100 *l. per Annum* on himſelf for Life, Remainder to his Son, *&c.* and his Mother joins in the Conveyance, and thirteen Years after he mortgages; Mortgagee ſhall not foreclоſe. *Jones* v. *Marſh*, *H.* 8 *G.* 2. *C. T. T.* 64.]

What ſhall be ſufficient Notice, *Vide Ante*, (I. 1.—4 C. 2.)

(4 I. 5.) When a Purchaſer may take in prior Incumbrances.

So, if a Purchaſer of Lands incumbred takes an Aſſignment of the Incumbrances paid with his Money; it will be well, tho' all the Incumbrances are not diſcharged. *R.* 2 *Ca. Ch.* 205.

So, if a Purchaſer of a Reverſion upon an Eſtate for Life, under a Decree of *Chancery*, pays his Money, and then the Life falls; he ſhall not be compelled to take his Money back again with Intereſt. 1 *Ch. R.* 75, 76.

(4 I. 6.) When he ought to diſcharge prior Incumbrances out of the Purchaſe Money.

If there is a Truſt for Payment of Debts, generally; a Purchaſer ſhall not be affected, tho' he has Notice. 1 *Ver.* 260.

Tho' more is ſold than is ſufficient to pay the Debts. 1 *Ver.* 303. *Semb. Cont.* 1 *Ver.* 487. *Vide Ante*, (4 I. 4.)

But, if the Truſt is for Payment of Debts mentioned in a Schedule; a Purchaſer ought to apply the whole Money paid by him to the Debts, otherwiſe he ſhall be affected by the Debts not diſcharged. 1 *Ver.* 303, 260, 1. *Lloyd* v. *Baldwin*, *M.* 1748. 1 *Vezey* 173.

So, if an Act of Parliament enables a Tenant for Life to raiſe Money for re-building and ſtocking a Printing-Office, burnt down by Fire; the Mortgagee, who advances Money upon this Security, ſhall be affected, if the Monies advanced are not applied to this particular Purpoſe. *R.* 2 *Ver.* 6.

So, if a Termor deviſes 2000*l.* for his Daughters Portions out of the Profits, and his Executor mortgages to *A.* who has Notice of the Deviſe; *A.* ſhall take, ſubject to the Deviſe, tho' the Executor had full Power to ſell the Term. *R. in Parliament*, 2 *Ver.* 445.

So, if an Executor ſells a Term to *A.* who has Notice of a Bond Debt due from the Teſtator to *B.* and pays the Purchaſe-Money to the Executor, who commits a *Devaſtavit*; *A.* ſhall be ſubject to the Demand of *B.* for the Term was Aſſets, and *A.* a Party to the *Devaſtavit*. *R.* 2 *Ver.* 616.

If a Man ſurrenders a Copyhold to the Uſe of himſelf for Life, and afterwards to *A.* (a Relation of his Wife's) in Fee, who is admitted, and afterwards, upon a ſecond Marriage, ſurrenders the ſame Copyhold to the Uſe of the ſecond Wife and her Children; ſhe ſhall not be relieved againſt *A.* *R.* 1 *Ver.* 365.

If Tenant in Tail of Lands by Deviſe, charged with 500*l.* to a Charity, levies a Fine to the Uſe of himſelf in Fee, and afterwards makes a Mortgage, or Sale; a Purchaſer by Fine and Nonclaim ſhall not be excuſed from paying the 500*l.* for the Title of the Vendor has the ſame Commencement with the Charity; and therefore, all Purchaſers, having Notice of the Will, ought to contribute in Proportion. *R.* 2 *Ver.* 662.

(4 I. 7.) Incumbrances are to be diſcharged in Proportion.

If, upon a Purchaſe, Land is ſettled upon *A.* for Life, and afterwards to *B.* in Fee; prior Incumbrances ought to be diſcharged in Proportion. *Vide Ante*, (2 I.)

So, if a Settlement is made upon a Wife for Jointure, and afterwards to the Iſſues of the Marriage; Incumbrances afterwards diſcovered ſhall be divided in Proportion; for the Wife ought not to be excuſed *in toto*. 1 *Ver.* 440.

(4 I. 8.) The Purchaſer of a Reverſion ſhall not controvert the Title of the particular Eſtate.

If a Man purchaſes a Reverſion after the Death of *B.* who claims an Eſtate for Life; *B.* ſhall be eſtabliſhed for his Life in his Poſſeſſion againſt the Purchaſer, without an Examination, whether he had a good Title. 2 *Ver.* 279.

(4 I. 9.) What Eſtates are within the Conſideration of a Purchaſe.

If a Father, or other Anceſtor Lineal, makes a Settlement upon the Marriage of his Son, Grandchild, *&c.* all Limitations to his Children or their Poſterity are within the Conſideration of the Settlement. *Per Cowper*, *Eq. Ca.* 132. * * 2d Part of 2 *Mod. Ca.*

(4 I. 10.) What not.

But all Limitations, after Failure of ſuch Iſſue, to Collateral Kindred, are voluntary, and out of the Conſideration of the Marriage Settlement. *Eq. Ca.* 132.* 2 *P. W.* 256.

* 2d Part of 2 *Mod. Ca.*

Otherwiſe, if the Father and Son, who make the Settlement, have both any Intereſt. 2 *P. W.* 256.

(4 I. 11.) Purchaſer without Notice.

A Purchaſer, without Notice of a prior Incumbrance, ſhall not be impeached, or prejudiced by it in Equity. *Eq. Abr.* 333. *Vide Ante*, (4 I. 3.) *Vide Notice, Ante*, (4 C. 1, &c.)

Nor diſcover his Title, nor loſe any Advantage which he has by Law. *Eq. Abr.* 333.

(4 K) Recovery, Common.

(4 K. 1.) Of what Effect it is in Equity.

A Common Recovery by a *Ceſtuy que Truſt* ſhall have the ſame Operation upon the Truſt, as it ſhall have by Law, being ſuffered of an Eſtate at Law. *Ca. Ch.* 49. *Vide Ante*, (3 N. 8.)—*Poſt*, (4 S. 3, 4.)

[If *A.* deviſes Lands to *B.* and his Heirs, to the Uſe of *B.* and his Heirs, in Truſt for *C.* and the Heirs of her Body, Remainder to *B.* in Fee, on Condition that he marry *C.* which he offers, and ſhe refuſes and marries another, and at full Age ſuffers a Recovery with her Huſband; this bars the Remainder, tho' without a Fine, and tho' the Bargain and Sale to make a Tenant to the *Præcipe*, is not inrolled till after the Recovery compleated. *Robinſon* v. *Comyns*, *H.* 9 *G.* 2. *C. T. T.* 164.]

[If there is a Limitation in a Will to *C.* and his Heirs, to the Uſe of him and his Heirs, in Truſt to pay Debts, and then in Truſt for *D.* and the Heirs of his Body, and in Default, Remainder to *C.* and his Heirs, provided he marries *M.* and *D.* ſuffers Recovery, it bars the Remainder to *C.* which was of an Intereſt diſtinct, either from the legal Eſtate or the Uſe. *Robinſon* v. *Cuming*, *P.* 1739. 1 *Atkyns* 473.]

[A Recovery in *C. B.* is not good of Copyhold Lands; but of cuſtomary Freeholds, which paſs by Surrender in a Borough-court, it may. *Oliver* v. *Taylor*, *T.* 1740. 1 *Atkyns* 474.]

(4 K. 2.) When a Defect of it ſhall be aided.

If a Common Recovery is ſuffered purſuant to an Agreement with him, who had Power to ſuffer a Recovery, it ſhall be aided in *Chancery*, tho' it was ſuffered by a Tenant for Life, the Agreement being with Tenant in Tail, who was dead at the Time of ſuffering the Recovery. *R. Ca. Ch.* 49.

Tho' the Agreement was voluntary, without a valuable Conſideration. *Ca. Ch.* 49.

(4 L) Releaſe.

(4 L. 1.) When it ſhall be avoided.

(4 L. 1.) If it be obtained by Fraud. *Vide Ante*, (2 C. 12)—2 T. 11.—3 M. 1, &c.)

CHANCERY will relieve againſt a Releaſe obtained by Fraud; as, if it be upon a Suggeſtion of a Falſity, or a Suppreſſion of the Truth; as, if a Man obtains a Releaſe, upon a Suggeſtion that a Will was revoked. 1 *Ver.* 20.

If a Man releaſes the Arrears of a Legacy (being 100*l.*) upon a Suggeſtion that he will pay Coſts, if he joins with the other Legatees in a Suit. 1 *Ver.* 32.

If

If a Man gets a Bond for 200*l.* to be delivered up, and a Releaſe of all Demands upon Payment of 20*l.* where the Obligee was ſuperannuated, tho' the Obligor inſiſts that he was a Relation, but does not prove any Mention thereof at the Time of Payment. *R. Eq. Ca.* 119. *

If *A.* pays 200*l.* to the Wife Executrix of *B.* in Satisfaction of 300*l.* and the Wife releaſes the 300*l.* and the Children of *B.* for whom the 300*l.* were aſſigned in Truſt, do not conſent; *A.* ſhall pay the other 100*l.* *R. Eq. R.* 89. * 2d Part of 2 *Mod. Ca.*

[A Releaſe procured from a Perſon immediately on his coming of Age, always gives a Suſpicion of Fraud, eſpecially if no Accounts are ſettled, or Account in Writing produced. *Steadman* v. *Palling*, *H.* 1746. 3 *Atkyns* 423.]

[But after a long Acquieſcence, the Court will not ſet it aſide againſt the Repreſentative, againſt whom no Fraud is charged; till, on an Account taken before the Maſter, it ſhall appear to have been unfair. *Ibid.*]

So, if a Releaſe extends beyond the Intent of the Parties, it ſhall be avoided in Equity; as, if a Widow, who had a Settlement of an Eſtate for her Jointure, releaſes all Demands to the Executor of her Huſband, and then the Inheritance of the Huſband is evicted, and he appears to have had only a Term for Years; ſhe ſhall not be barred of the Term by this Releaſe. *R. Ca. Ch.* 47. (4 L. 2.) Or extends beyond the Intent. *Vide Ante.* (2 T. 3.)

If *A.* releaſes all Demands to *B.* upon an Award made upon a Submiſſion concerning Legacies, or other different Matter; it does not bar him as to a Truſt of the Land. *R.* 2 *Ca. Ch.* 126.

So a General Releaſe does not bar, when made upon another Occaſion. 2 *Ca. Ch.* 126.

So a Releaſe by Will to *A.* of all Debts, Accounts and Demands againſt him, does not diſcharge *A.* of a Cheſt of Jewels of the Teſtator, in his Cuſtody. *Dub.* 2 *Ver.* 114.

So, if a Releaſe is clandeſtinely obtained to defeat a prior Agreement, it ſhall be avoided in Equity; as, if *B.* agrees by Articles on the Marriage of *C.* to ſettle 100*l. per ann.* after his Death upon *C.* and his Heirs, and afterwards *B.* upon Pretence of a greater Advantage, obtains a Releaſe from *C.* The Releaſe ſhall be avoided, tho' the Eſtate was to be ſettled in Fee, and not upon the Iſſue of the Marriage. *R.* 1 *Ver.* 241. (4 L. 3.) Or obained with Intent to defeat a prior Agreement.

If *A.* agrees to ſell an Eſtate to *B.* which was mortgaged to *D.* and afterwards releaſes his Equity of Redemption to *D.* without a new Conſideration. R. *Hard.* 320.

A fortiori, if he releaſes to *D.* pending a Bill for a Performance of the Purchaſe. *Hard.* 320.

[If there is an Aſſignment of a Bond in Truſt for the Benefit of others, whether with or without Conſideration, precedent to a Releaſe, the Obligee cannot releaſe; nor can it operate to the Releaſee, as he muſt be preſumed to have Notice of the Aſſignment, being a Truſtee in it. *Bower* v. *Swadlin*, *M.* 1738. 1 *Atkyns* 294]

(4 L. 4.) When it ſhall not be avoided.

But a Releaſe ſhall not be avoided, upon Pretence that it was Fraudulent, where there is a ſubſequent Releaſe to the ſame Intent, which is not prayed to be avoided by the Bill. 1 *Ver.* 86.

So, if there be a Bill by *A.* and *B.* for an Account of the Profits of an Office in which they are Joint-tenants, and one releaſes to the Defendant *pendente lite*, the Releaſe ſhall not be avoided; and if *A.* brings a new Bill againſt *B.* and the other Defendant, which ſuggeſts Combination between them, the prior Defendant may plead the Releaſe to the ſecond Bill; for, being a Bar in Law, it ſhall not be avoided by a bare Suggeſtion. *R. Hard.* 168.

[A Releaſe to one Obligor, is a Releaſe to both, in Equity as in Law. *Bower* v. *Swadlin*, *M.* 1738. 1 *Atkyns* 294.]

(4 M) Reſtitution.

IF a Perſon is tortiouſly ouſted of his Office, without Proceſs at Law, Equity will direct that he be reſtored to his Office, and that the Wrong-doer ſhall account to him for the Profits, till the Title can be tried or determined by Law. *Ch. R.* 50.

(4 N) Rent.

(4 N. 1.) When recovered in Equity, tho' there is no Remedy by Law.

RENT ſhall be recovered in Equity, when there is no Remedy for it at Law; as, a Rent-ſeck ſhall be decreed, tho' the Grantee never had Seiſin. *Ca. Ch.* 79, 147.

So, if Rent was conſtantly paid, till the laſt twelve Years; the Arrears and the accruing Rent ſhall be decreed, tho' the Deed by which it was created be loſt. *R. Ca. Ch.* 120. 1 *Ver.* 359.

[If thro' Proceſs of Time the Remedy at Law is loſt, or become difficult, Equity will give Relief on the Foundation only of the Payment of the Rent for a long Time, or where the Nature of the Rent is not known, ſo as to be ſet forth, but then all the Terretenants muſt be brought before the Court. *Benſon* v. *Baldwyn*, *P.* 1739. 1 *Atkyns* 598.]

So, if there be no Attornment to the Grant, the Rent ſhall be decreed. *Ca. Ch.* 147.

So, if a Fine for raiſing of a Rent is defective, it ſhall be aided. 3 *Ca. Ch.* 92.

So, if *A.* grants ſeveral Annuities out of a Term, and then aſſigns the Term to *B.* tho' the Grants are void for Uncertainty in the *Habendum*, they ſhall be decreed againſt all claiming through *B.* 1 *Ch. R.* 8.

So, if *A.* grants an Annuity in Truſt for *B.* and afterwards ſells to *C.* having Notice, who afterwards obtains a Releaſe from the Truſtees, without the Conſent of *B.* Tho' the Term for which the Annuity was granted be expired, *B.* ſhall be aided againſt the Releaſe, and the Land ſhall be charged with all Arrears, tho' the Term be expired. *R. Ch. R.* 411, 2.

If *A.* ſurrenders a Copyhold to *B.* in Fee, rendering a Rent of 5*l. per Ann.* to *A.* and his Heirs, and aſſigns the Rent to *D.* who is admitted to it; Equity will inforce the Payment of the Rent to *D.* tho' an Admittance is not a proper Title to the Rent. *R.* 2 *Ver.* 16.

If a Leſſor, in Conſideration of an Improvement, covenants to grant a ſubſequent Leaſe at the prior Rent; an Aſſignee of the Reverſion ſhall be decreed to do it. *R.* 2 *Ver.* 447.

So, if a Rent is deviſed out of a Rectory to *B.* for which he cannot have any Remedy by Diſtreſs; a Court of Equity will decree not only the Rent *in futuro*, but all Arrears, tho' there was no Remedy for them at Law. *R. Ca. Ch.* 79.

So, if there is a Leaſe for Years, rendering 40*l. per Ann.* Rent, and the Leſſor ſettles the Land upon *B.* and his Heirs Male upon his Marriage with *A.* and it is agreed that *A.* ſhall have the 40*l. per Ann.* for Life; it ſhall be decreed, tho' *A.* has no Remedy by Diſtreſs. *R.* 1 *Ch. R.* 5.

So, if the Lands, out of which the Rent iſſues, are mixt with others, whereby no Diſtreſs can be taken for it. 1 *Ch. R.* 61, 67.

If a Leaſe of an Incorporeal Thing is aſſigned, and the Aſſignee enjoys, he ſhall be decreed to pay the Rent, tho' not bound by Law. *R.* 2 *Ver.* 423.

[A mere Grantee of the Crown, without Aid of Parliament, of Rents of a Manor where there are no Demeſne Lands to diſtrain on, may have Relief in Equity. *D. Leeds* v. *Powell*, *M.* 1748 1 *Vezey* 171.]

So, if there be a Deviſe to *A.* paying a Rent-charge to *B.* who dies; his Executor ſhall have Relief in Equity for the Arrears, tho' he does not alledge Want of a Diſtreſs. *R. per Maſt. of the Rolls*, 2 *Ver.* 386. *Semb. Cont. per Ld. K. Wright*, 2 *Ver.* 382.

So, if the Aſſignee of a Term rendering Rent aſſigns over, the Leſſor ſhall have Remedy againſt him in Equity for the Rent, for ſo long as he held the Land. *R.* 1 *Ver.* 165. [*Valliant* v. *Dodemede*, *P.* 1743. 2 *Atkyns* 546.]

[But the Aſſignee is not liable to the Rent incurred after the Aſſignment by him to another. *Ibid.*]

[If *A.* makes a Leaſe of a Coal-mine, reſerving Rent, to *B.* who declares a Truſt of this Leaſe, that he is Truſtee for five Perſons, they enter and take the Benefit, then *B.* becomes inſolvent, the Mine unprofitable, and the Partners abandon it; the *Ceſtuique* Truſts ſhall pay the Arrears during the Time they concerned themſelves in taking the Profits. *Per Talbot* C. on Appeal from the Rolls. *Clavering* v. *Weſtley*, *T.* 1736. 3 *P. W.* 402.]

So, if the Leſſee aſſigns to *B.* Equity will oblige him to admit an Attornment. *R.* 2 *Ver.* 113. *Vide Poſt*, (4 N. 4.)

So a Penſion may be recovered in Equity as well as in the Spiritual Court, or in a Writ of Annuity. *R. Hard.* 230.

Tho' payable out of a Vicarage, which has only caſual Profits. *R. Hard.* 230.

(4 N. 2.) Or, the Remedy by Law is not ſufficient.

So, if the Remedy at Law be not ſufficient; as, if a Man deviſes a Rent out of a Rectory, and there is not Glebe ſufficient for a Diſtreſs; the Deviſee ſhall be decreed to be paid out of the whole Rectory. *R. Ca. Ch.* 79.

So an Executor ſhall be decreed to pay the Arrears due in the Time of the Teſtator Terre-tenant. *Vide Ante*, (3 G. 2.)

So, if a Terre-tenant aſſigns his Eſtate to prevent a Diſtreſs for Rent, the Grantee ſhall be aided. 3 *Ca. Ch.* 91.

Or, permits the Land to lie freſh, or to be depaſtured in the Night only, to avoid a Diſtreſs. 2 *Ver.* 382.

(4 N. 3.) When it ſhall not be recovered in Equity.

But Equity does not extend Relief to the Owner of a Rent, when he has a Remedy by Law, tho' it be not ſo beneficial; as, if Land ſubject to a Rent be under Sequeſtration, the Court will not oblige the Sequeſtrators to pay it out of the Money received by them. 2 *Ver.* 713. *Vide infra.*

So, if Land ſubject to a Rent be aliened by Parcels to ſeveral Perſons, Equity will not allow the Recovery of the Whole againſt one. *Eq. Abr.* 33.

The Grantee of a Rent ſhall not have a Remedy in Equity for the Rent, merely for the Want of a Diſtreſs, if the Want of a Diſtreſs be not cauſed by Fraud or other Default in the Terre-tenant. *R. Ca. Ch.* 147. *R.* 2 *Ver.* 382.

So, where the Leſſee was ouſted by the Uſurpers and the Eſtate ſold, the Leſſee was relieved againſt the Leſſor, after the Reſtoration. *R.* 3 *Ch. R.* 16.

So, if Rent be recoverable by Diſtreſs at Law, the Party ſhall not have Aid in Equity to have Poſſeſſion, or a Receiver appointed. 2 *Ver.* 613, 382.

So Rent ſhall not be decreed in Equity, where it has not been paid for 30 Years. *Ca. Ch.* 184.

So Rent ſhall not be decreed to the Executor, where the Leſſor dies on the laſt Day of Payment before Sun-ſet. *R. Sal.* 578.

So Equity will not charge Land with Payment of Rent to ſuch a Manor. *R. Ray.* 221.

So, generally, the Perſon ſhall not be ſubject to the Rent, where the Land only was charged. *Ca. Ch.* 145, 185.

So, if *Blackacre* and *Whiteacre* are ſubject to a Rent, and *Blackacre* is purchaſed by *A.* and the Vendor covenants that it ſhall be diſcharged of the Rent; it ſhall not be decreed that *Whiteacre*, afterwards purchaſed by another Perſon, ſhall ſtand charged with the Whole; for *A.* has Remedy upon the Covenant only. *R. Hard.* 87.

(4 N. 4.) Againſt an Aſſignee.

So a Rent ſhall not be decreed againſt the Aſſignee of a Wine-Licence Leaſe, who purchaſed without Notice of the Rent; for the Rent does not run with the Licence, but is due upon the Contract only. *R. Hard.* 88.

So an Aſſignee ſhall not be prevented of a Benefit, allowed by Law, for the avoiding of a Rent. 2 *Ver.* 423.

An Aſſignee ſhall not be relieved againſt a Rent, or Covenants, recovered againſt him at Law, tho' he took the Aſſignment by Way of Mortgage, and never was in Poſſeſſion; for it was his Folly to take an Aſſignment of the whole Term, and not an Under-Leaſe. *R.* 2 *Ver.* 275, 374.

So a Leſſee ſhall not be compelled to ſurrender to the Leſſor, to enable him to renew a College Leaſe, if there be no Agreement for it; tho' the Leſſor offers to grant a Leaſe *de novo*, to the ſame Effect. *R.* 2 *Ver.* 383.

(4 N. 5.) When apportioned in Equity.

Vide Ante, (2 E.)

A Rent may be apportioned by a Decree in Equity, where it ſhall not be apportioned at Law. *Ca. Ch.* 32.

As, if a Right of Common is evicted; tho' it be not an Eviction of the Land. *Ca. Ch.* 32. 3 *Ch. R.* 11.

So, if by antient Compoſition between two Abbies, the Lands of one are diſcharged of Tithes, by Payment of 26*l. per Ann.* and the Lands come into the Hands of divers Patentees; the Compoſition ſhall be apportioned. *R. in Exchеq. Sav.* 5.

But if, for Non-payment of Rent, the Leaſe is avoided in Law, and an Aſſignee of Part prays to be relieved, he ought to pay all Arrears, and repair; for the Rent ſhall not be apportioned.

So, if a Common be evicted, but the Land is ſtill equal in Value to the Rent; the Rent ſhall not be apportioned. 3 *Ch. R.* 12.

[Where Money is ſettled to be laid out in Land, and in the mean Time inveſted in Government-ſecurities, and Tenant for Life dies in the Middle of the Half-year, the Dividend ſhall not be apportioned, but paid to the Reverſioner; in Caſe of a Mortgage it is otherwiſe. *Sherrard* v. *Sherrard*, *P.* 1747. 3 *Atkyns* 502.]

(4 N. 6.) When an Extinguiſhment prevented.

So an Extinguiſhment, or Suſpenſion of a Rent, contrary to the Intent of the Parties, may be prevented in Equity; as, if the Purchaſer of Lands prevails with him, who had a Rent excepted out of the Purchaſe, to join in a Fine, in which two or three Acres, out of which the Rent iſſued, are contained; there ſhall be Relief in Equity. *R. Ca. Ch.* 273.

What will be an Extinguiſhment, or a Suſpenſion in Law, *Vide Suſpenſion.*

What in Equity, *Vide Poſt*, (4 N. 8, 9.)

So, if a Rent-charge be iſſuing out of Lands deviſed for Payment of Debts, of which Part are ſold for ſuch Intent; the whole Rent ſhall iſſue out of the Reſidue of the Lands. *Ca. Ch.* 295.

So, if a Rent is augmented by Encroachment, Equity does not aid againſt the Encroacher. 1 *Ver.* 517.

(4 N. 7.) When a Stranger ſhall be aided againſt a Diſtreſs for Rent.

If the Cattle of *B.* eſcape into Land adjacent, whereupon the Grantee of a Rent-charge, out of the ſame Land, which was in Arrear for twenty Years, diſtrains, *B.* ſhall be aided in Equity. *R. Pr. Ch.* 8.

So, if Cattle are lodged at an Inn, for which Rent is due, with the Privity of the Leſſor; in caſe he diſtrains them for Rent in Arrear, the Owner of the Cattle ſhall be aided in Equity. *R. Pr. Ch.* 7.

(4 N. 8.) When Rent, or other Charge upon Land ſhall be extinguiſhed.

If a Rent, or other Charge would be extinguiſhed, or ſuſpended by Law, it ſhall be alſo in Equity; if there be no Fraud or Covin. *Vide Ante*, (4 N. 6.) *Vide Suſpenſion.*

As, if 100*l.* be charged by Will upon Land, payable to *B.* and the Land afterwards deſcends to *B.* in Fee; the 100*l.* ſhall be merged. 2 *P. W.* (604.)

So, if 100*l.* or other Legacy be ſecured by a Term, and the Reverſion deſcends or comes to *B.* in Fee, or in Tail, to whom it was payable, and *B.* levies a Fine or ſuffers a Recovery, before Aſſignment of the 100*l.* to another, it ſhall be extinct. 2 *P. W.* (605.)

(4 N. 9.) When not.

But there ſhall be no Merger, if only an Eſtate-tail comes to *B.*

So, if an Eſtate in Fee, or for Years be veſted in Truſtees for ſecuring 100*l.* Legacy, and the Eſtate afterwards comes to *B.* to whom it is payable. *R.* 2 *P. W.* (604.)

(4 O) Revocation.

(4 O. 1.) When good, tho' all Circumſtances are not purſued.

WHEN a Power of Revocation is good, and when extinguiſhed, and when purſued, *Vide Uſes*, (L. 2, &c.) *Vide Ante*, (4 H. 1, &c.)

If a Man makes a Settlement, with Power of Revocation in the Preſence of three Witneſſes, and he revokes by a Will ſubſcribed only by two Witneſſes; this ſhall be ſufficient in *Chancery*. *R.* 2 *Vent.* 350.

So, if a Power of Revocation be reſerved upon Tender of 12*d.* in one Place, and the 12*d.* is tendered and accepted of in another Place. *R.* 3 *Ca. Ch.* 68.

(4 O. 2.) Where prevented by Fraud.

In all Caſes, where a Man has a Power of Revocation, and he makes a Revocation, but by the Fraud of any one is prevented from purſuing all the Circumſtances in the Power; it ſhall be allowed in Equity. 3 *Ca. Ch.* 89, 108, 122.

(4 O. 3.) Or Accident.

So, if he be prevented by Accident, or the Act of God; as, if a Deed is directed by the Party to make a Revocation, and ingroſſed, and he dies, before Execution. 3 *Ca. Ch.* 69, 93.

If a Man by Sickneſs, or other Accident, be diſabled to make a Tender in Perſon, he ſhall be aided, if the Tender is made by another. 3 *Ca. Ch.* 89, 109, 126.

(4 O. 4.) Or Neceſſity.

So, if he be prevented by Neceſſity; as, if a Man has Power to revoke by Deed executed before ſix Witneſſes of whom three are to be Peers, and he executes his Power in a foreign Kingdom before ſix Witneſſes, it ſhall be aided, tho'

tho' neither of them was a Peer, for it was not in his Power. *R.* 3 *Ca. Ch.* 68, 90. *Eq. Ca.* 14.*

* 2d Part of 2 *Mod. Ca.*

If there be a Power to revoke with the Aſſent of three Subſidy-Men, it ſhall be aided, if it be done by the Aſſent of three ſubſtantial Men, who were of Ability to be aſſeſſed to a Subſidy, if there had been ſuch a Manner of Taxation. 3 *Ca. Ch.* 90.

(4 O. 5.) Or Default of the Party.

So, if he be prevented by the Default of him who has a Benefit by the Settlement to which the Power is annext; As, if *A.* makes a Settlement upon *B.* and his Children, with a Power of Revocation, and ſuffers the Deed to remain in his Cuſtody, and, being inclined to revoke, ſends to *B.* who refuſes Delivery of the Deed, by which Means the Circumſtances of the Power are miſtaken. 3 *Ca. Ch.* 67, 84.

So, if *B.* does any Thing to prevent the Knowledge of the Circumſtances of his Power. 3 *Ca. Ch.* 84.

(4 O. 6.) Defective Execution of a Power of Revocation aided.

So a defective Execution of a Power ſhall be aided in Equity, for the Relief of a Purchaſer, &c. as, if the Power be to revoke upon Tender of 12*d.* to *A.* in *Weſtminſter*, and he tenders, and it is accepted by *A.* in another Place. 3 *Ca. Ch.* 68. *Ch. R.* 38.

Tho' he be a Purchaſer with Notice. *Per Treby*, 3 *Ca. Ch.* 89.

Or, where the Settlement is for Payment of Debts. *Ibid.*

Or, for Proviſion for younger Children. *Ibid.*

If the Power be to revoke by Writing under Hand and Seal for a Proviſion for younger Children, and the Party, being ſick, gives Inſtructions to Counſel under his Hand to be drawn up in Form, which is drawn and ingroſſed, but before Execution the Party dies; it will be a good Revocation in Equity. 3 *Ca. Ch.* 69.

If a Power be given to *A.* to make a Jointure, and *A.* by Articles covenants upon his Marriage to make a Jointure of ſuch Value, and afterwards directs a Jointure to be made of ſuch Lands to that Value, and after the Deed is drawn, dies before Execution; it ſhall be decreed in Equity. *Eq. Ca.* 20. *

* 2 Part of 2 *Mod. Ca.*

If there be a Power of Revocation, and a ſubſequent Settlement is made with all the Circumſtances required; it ſhall be a Revocation, tho' there is no Reference to the Power. *R. Fig.* 218. *Vide Poiar. Vide Ante*, (4 H. 1, &c.)

(4 O. 7.) When not good.

(4 O. 7.) In Aid of a voluntary Settlement. *Vide Ante*, (2 C. 8.—2 T. 9.—4 H. 9.)

But a voluntary Settlement by him, who has a Power of Revocation ſhall never be aided in Equity, if it be not made purſuant to all the Circumſtances of the Power. *R.* 3 *Ca. Ch.* 107.

And therefore, if there be a voluntary Settlement with a Power to revoke by Writing with ſix Witneſſes; a Will, by which the ſame Eſtate is deviſed to others, executed in the Preſence of three Witneſſes, ſhall not be a Revocation, *R. inter Bath and Montague*, 3 *Ca. Ch.* 86, 93, 107, 127.

Tho' the prior Settlement does not appear to have been in the Cuſtody, or Memory of the Teſtator. 3 *Ca. Ch.* 64, 86.

Tho' the prior Settlement was for Confirmation of a prior Will, which is revocable in its Nature. *R.* 3 *Ca. Ch.* 64, 86, 99.

So, if the Power be to revoke upon Tender of a Guinea, and the Party executes a Deed to other Uſes, without any Tender; it ſhall not be aided in Equity. *Adm.* 3 *Ca. Ch.* 70, 108. *R.* If the Intent to revoke is not proved. 2 *Ver.* 69.

If a Wife has Power to revoke in Favour of her Huſband, and ſhe ſends ſeveral Letters to Counſel, to make a Deed of Revocation, but nothing is done, it ſhall not be aided. *R. Eq. Ca.* 15.*

* 2d Part of 2 *Mod. Ca.*

(4 O. 8.) Who may make a Revocation.

The Revocation ought to be made by thoſe, who have Ability to make it by the Settlement.

If two Huſbands and their Wives make a Conveyance, with Power to revoke with the Conſent of their Wives, to wit, *if they or either of them be living then to revoke*, if one of the Wives dies, the Huſband ſurviving and the other Wife may revoke. *R.* 2 *Rol.* 178.

(4 P.) Satisfaction.

IF a Covenant Bond, *&c*, be ſatisfied, tho' not cancelled, Equity will relieve the Covenantor, Obligor, *&c*.. *Vide Ante*, (2 X. 3, &c.)

Tho' ſatisfied by Matter collateral. *Vide Ante*, (2 X. 5.)

[If a Man leaves 520 *l.* to five Granddaughters, and makes their Mother Executrix, and her Huſband poſſeſſes himſelf of the perſonal Eſtate, and prefers all his Daughters in Marriage, giving them greater Portions than their Shares amounted to, and they acquieſce therein, they ſhall not come after his Death to demand ſuch Shares. *Seed* v. *Bradford*, *T.* 1750. 1 *Vezey* 501.]

[If *A.* who by the Will of *B.* to whom he is Executor is to pay his Aunt *C.* 300 *l. per Annum*, deviſes the Reſidue of his Eſtate to his Mother and his Aunt *C.*; this is not a Satisfaction of the 300 *l.* Annuity, tho' the Moiety of the Reſidue is of greater Value, for the Value was uncertain. *Barret* v. *Beckford*, *T.* 1750. 1 *Vezey* 519.]

[Deviſe of Reſidue of Real and Perſonal Eſtate for Life is not a Satisfaction for a Sum to be laid out in Lands in Fee by Articles. *Alleyn* v. *Alleyn*, *M.* 1750. 2 *Vezey* 37.]

[If *A.* by Marriage-articles covenants that Lands ſettled on his Wife are of 1600 *l.* Value, and makes his Will. ratifying the Articles, and leaving his Wife Lands in *B.* for Life, this Deviſe is not a Satisfaction of the Articles. *Prime* v. *Stebbing*, *T.* 1752. 2 *Vezey* 409.]

[If *A.* has an Eſtate in ſtrict Settlement, his firſt Son Tenant in Tail, and afterwards on Son's Marriage they agree, that *A.* ſhall have 800 *l.* of Wife's Portion, and convey to Truſtees Lands to ſecure 50 *l. per Annum* to the Son, and 800 *l.* to his younger Children; and *A.* afterwards makes his Will, and leaves 700 *l. per Annum* to his Son, provided he ſettles the whole Family Eſtate to ſecure to *B.* 100 *l. per Annum* out of ſaid Lands, and makes great Proviſion for the Son's Children at twenty-five or Marriage, and afterwards by Deed, Fine and Recovery, *A.* and Son ſettle the Eſtate ſtrictly, making Son Tenant for Life; the Condition in the Will being thus impoſſible, the 700 *l.* Annuity is a Satisfaction for the 50 *l.*; had it not been for the laſt Deed it would not have been a Satisfaction, and the Proviſion for the Children being on a Contingency, is not Satisfaction for the 800 *l.* *Matthews* v. *Matthews*, *T.* 1755. 2 *Vezey* 635.]

Statute.

Vide Statute-Staple, (D. 2. &c.)

(4 Q.) Superſedeas.

When granted by *Chancery*.

IN Vacation, a *Superſedeas* may be ſued in *Chancery* to Proceſs out of another Court; as to a *Capias* or *Exigent* out of *C. B.* directed to the Sheriff to take Surety for the Appearance of the Party. *F. N. B.* 236. *A.*

Or, if he finds Surety in *Chancery*, there ſhall be a *Superſedeas* to the Sheriff to ſet him at large, if he has taken him; if he has not taken him, to arreſt him. *F. N. B.* 236. *A.* 237. *A.*

So, upon an *Audita Querela* upon a Statute Merchant, *&c.* which is forged, *&c.* there ſhall be a *Superſedeas* to the Sheriff, that, upon Surety to appear and to pay the Debt if he be condemned, he do not moleſt him. *F. N. B.* 236. *B.* 246. *A.*

So, it ſhall be granted to diſcharge one out of Execution, where the Execution is ſued by an Executor, upon a Judgment by his Teſtator, without a *Scire Facias*. *R.* 1 *Ch. R.* 90.

Or, to prevent Execution, where the Party has ſued an Attaint. *F. N. B.* 237. *F.*

Or a Writ of Error, or an Appeal. *F. N. B.* 239. *B. E.*

So, if a Man be taken upon the Statutes of Proviſors, for ſuing a Citation of Appeal to *Rome*. *F. N. B.* 236. *C.*

Or, upon the Statute of Labourers, for retaining the Servant of another. *F. N. B.* 236. *D.*

Or, if a Servant be ſued for departing without Licence. *F. N. B.* 236. *E.*

Or, an Action be brought againſt Sureties. *F. N. B.* 237. *B.*

Or, in any Perſonal Action. *F. N. B.* 237. *D.*

[If Plaintiff in an Action on the Calico Act, 7 *G.* 1. *c.* 7. *ſſ.* 4. ſerves Defendant with a Copy of a Writ, inſtead of Summons and *Pone*, or ſpecial *Capias*, and afterwards gets the Curſitor to alter the Return of the Original; the Alteration is erroneous, and the Writ ſhall be ſuperſeded. *Weavers Company* v. *Hayward*, *T.* 1746. 3 *Atkyns* 362.]

So, if Surety be found in *Chancery*, a *Superſedeas* goes to Proceſs upon an Indictment before Juſtices of the Peace. *F. N. B.* 237. *C.*

So it goes to a *Capias pro Fine*; if the Plaintiff ſues an *Elegit*, or the Defendant ſues an Attaint. *F. N. B.* 238. *A. C.*

In an Appeal of Rape. *F. N. B.* 238. *D.*

Upon an Attachment, *Supplicavit* of the Peace, *&c.* out of *Chancery*. *F. N. B.* 238. *E.* *Vide Poſt*, (4 R.)

If an Inferior Court entertain a Suit where it has not Juriſdiction. *F. N. B.* 239. *D. H.*

Or, if an Eccleſiaſtical Court proceeds after a Prohibition. *F. N. B.* 239. *B.*

But a *Superſedeas* ſhall not be allowed in *Chancery* upon an *Exigent* after a *Capias ad ſatisfaciendum*. *F. N. B.* 237. *A. B.*

Nor ſhall it be allowed to a Prohibition to an Inferior Court, for that it was granted after Plea there, (tho' in ſuch Caſe it ought not to be granted,) without an *Affidavit* that the Cauſe ariſes within the Juriſdiction. 1 *Ver.* 301.

[The Court will not on Motion ſuperſede a Writ of Replevin out of this Court, unleſs a fraudulent Uſe is made of it. *Anon.* *M.* 1741. 2 *Atkyns* 237.]

[This Court cannot grant a *Superſedeas*, nor quaſh a Writ *de excommunicato capiendo*, after the Return, but it can before; the Application after, muſt be to the King's Bench. *Ex parte Little*, *P.* 1747. 3 *Atkyns* 479.]

[The Court will not ſuperſede ſpecial Original, becauſe it has been altered and amended by Plaintiff's Attorney with Leave of the Curſitor, and afterwards reſealed; for it is the Courſe of the Office, and even if it be after *Oyer*, and Copies delivered. *Smith* v. *Wilmer*, *M.* 1747. 3 *Atkyns* 595.]

(4 R.) Supplicavit.

Vide Forcible Entry, (D 16, 17.

ON Surety of the Peace or good Behaviour demanded, the *Chancery* or *B. R.* will award a *Supplicavit* to the Sheriff, or Juſtices of the Peace, or both, or to one Juſtice of the Peace, commanding him to take of ſuch a one Surety for the Peace, *&c.* *F. N. B.* 79. *G.*

And upon that he ſhall have an *Alias* and *Pluries*, and afterwards an Attachment againſt the Sheriff, if there be any Default in him. *F. N. B.* 79. *G.*

But, before a *Supplicavit* granted, the Party, who demands it, muſt make an *Affidavit* before a Maſter in *Chancery*, that he does not pray it out of Malice. *F. N. B.* 79. *H.*

And

And upon ſuch *Affidavit*, the Maſter will make his Warrant, upon which one of the Clerks of the Office may immediately have a *Supplicavit*.

[The Court will not grant it on a Quaker's Affirmation; for if the Party complained of is not in Court on exhibiting Articles of the Peace, an Attachment goes on the Oath of the Complainant. *Ex parte Gumbleton, M.* 1740. 2 *Atkyns* 70.]

Or, upon Information to the Court of ill Behaviour, the Court will grant a *Supplicavit*. 2 *Vent.* 345.

[*Supplicavit* (and ſo a Rule for Surety of the Peace in *B. R.*) is never diſcharged, but on a ſtrong Caſe to ſhew Falſity or Contrivance. *King* v. *King*, *T.* 1754. 2 *Vezey* 578.]

[If one taken on a *Supplicavit* continues in Priſon a Year and a Day, without freſh Threatning or Miſbehaviour, he ſhall be diſcharged on ſmall Bail. *Groſvenor's Caſe*, *P.* 1731. 3 *P. W.* 103.

(4 S.) Tenant in Tail.

(4 S. 1.) When his Eſtate is bound by his Agreement.

IF Tenant in Tail agrees to make a Settlement of Lands intailed, he ſhall be bound by his Agreement. *R.* 22 *Car.* 2. *Ca. Ch.* 171.

So, if the Iſſue in Tail accepts of the Recompence agreed to be paid to his Father for ſuch Settlement, he ſhall be bound by it; for that makes it his own Agreement. *R. Ca. Ch.* 172.

So, if Tenant in Tail covenants, upon valuable Conſideration, to levy a Fine, and is decreed ſo to do, but dies before the Fine is levied; the Iſſue in Tail ſhall be bound by it. *Per Lord Chanc.* 28 *Car.* 2. *Ca. Ch.* 294.

So, if Tenant for Life, with Power to make a Jointure to the Value of 1000*l. per Ann.* ſettles Lands, which are only 600*l.* and covenants to make it up 1000*l.* his Son, being Tenant in Tail in Remainder, ſhall be decreed to make the Jointure up 1000*l. per Ann.* *R.* 2 *Ver.* 379.

But generally, the Iſſue in Tail is not bound by the Agreement of his Father, to make a Conveyance of the Eſtate intailed. *R. Ca. Ch.* 172. *D. Ca. Ch.* 236. *Fra. E. of Cov.* 4, 5, 13.

Nor by his Covenant to ſuffer a Recovery, where the Tenant in Tail was decreed to do it, and died in Execution for not performing the Decree. 2 *Ver.* 306. *R. Eq. Abr.* 265, 6.

So, if Tenant in Tail, with Power to make a Jointure, by Articles before Marriage agrees to ſettle a Jointure upon the Wife, without ſaying, of what Lands in particular, and dies before the Jointure made, without Iſſue; the Jointure ſhall not be decreed againſt the Wife of him in Remainder, who had ſettled the ſame Lands upon his Wife for her Jointure after Notice. 1 *Ver.* 406, 7.

So, where a Father ſettled Lands for Jointure of a ſecond Wife by Leaſe and Releaſe, and covenanted for further Aſſurance, and a Fine was taken of the Father, but he died before the Fine was perfected; the Maſter of the Rolls would not decree, that the Heir by the firſt Marriage, who claimed by Virtue of an Intail, ſhould perfect the Fine. 2 *Ver.* 3.

So, if Land be ſettled, or deviſed to Truſtees in Truſt for *A.* for his Life, afterwards to *B.* in Tail, *&c.* a Recovery by *B.* without the Truſtees, does not bar the Remainder. *Eq. Abr.* 256.

(4 S. 2.) When his defective Conveyance ſhall be aided.

If Tenant in Tail makes a defective Conveyance, it ſhall be ſupplied in *Chancery*; as, if upon Marriage he makes a Settlement by Feoffment, and afterwards levies a Fine, and deviſes to his younger Son; the elder Son of the Marriage ſhall be aided againſt the Younger. *Semb. Ca. Ch.* 240. *Vide Ante*, (2 T. 8.—3 N. 2.—4 O. 6.)

If he makes a Deviſe to Charitable Uſes, it will be good. *Ray* 249. *Vide Uſes*, (N. 11, &c.)

If

If Tenant in Tail of an Equity of Redemption deviſes for Payment of Debts, it will be good. 1 *Ver.* 41.

So, if a Copyholder in Tail purchaſes the Freehold of his Copyhold, to him and his Heirs, and afterwards for Money ſells to *A.* and his Heirs, and conveys to him by a Conveyance at Common Law; *A.* ſhall be aided againſt the Iſſue in Tail; for it being ſevered from the Manor, there can be no Recovery there. *Semb.* 2 *Ca. Ch.* 174.

(4 S. 3.) *Ceſtuy que Truſt* in Tail.

A Truſt is a Creature of *Chancery*, and cannot be intailed within the *St. W.* 2. 13. *De Donis Cona.* 2 *Ca. Ch.* 64.

And therefore, an Eſtate to Truſtees in Truſt for another in Tail is not favoured. 2 *Ca. Ch.* 30.

(4 S. 4.) How his Eſtate ſhall be barred.

If *Ceſtuy que Truſt* in Tail ſuffers a Common Recovery, this bars the Remainders over, tho' there was no legal Tenant to the *Precipe*; for a Conveyance by *Ceſtuy que Truſt* ſhall have the ſame Operation upon the Truſt, as his Conveyance at Common Law, if the Truſt had been executed. *R.* 2 *Ca. Ch.* 64, 78. *Dub. Ca. Ch.* 68, 213. *R.* 1 *Ver.* 13, 440. *R.* where it was upon a Conſideration. *Ca. Ch.* 49. 2 *Ver.* 132. *Eq. Ca.* 144. * *Eq. Abr.* 255, 258.

* 2d Part of 2 *Mod. Ca.*

So, if Tenant in Tail in Equity levies a Fine, it ſhall be a Bar to his Eſtate, as a Fine at Law, if his Eſtate was executed. *Ca. Ch.* 49, 213.

If he levies a Fine, and five Years paſs after his Death without Iſſue, it ſhall be a Bar to him in Remainder. 1 *Ver.* 226. *Eq. Ca.* 144. * *Eq. Abr.* 256.

* 2d Part of 2 *Mod. Ca.*

So his Feoffment, or Bargain and Sale bars the Iſſue in Tail. *Dict.* 2 *Ca. Ch.* 64. 1 *Ver.* 440. 2 *Ver.* 133. *Cont. per Cowper*, 2 *Ver.* 552.

If the Truſtees join in a Feoffment, which will not be a Breach of Truſt. *R.* 2 *Ver.* 345.

So a Deviſe by *Ceſtuy que Truſt* in Tail, in Truſt for a good Uſe, bars the Intail. *Pr. Ch.* 228.

So his Agreement, upon Marriage, to make a Settlement binds the Iſſue. *Semb. Ca. Ch.* 236. *Fra. E. of Cov.* 5.

So, if a voluntary Agreement be made with a Son Tenant for Life, to make him Tenant in Tail, and then the Father dies, and Tenant for Life ſuffers a Recovery; it ſhall be aided in Equity. *R. Ca. Ch.* 49.

So. if *A.* upon his Marriage covenants to ſurrender a Copyhold Eſtate to the Uſe of him and his Wife, and the Heirs Male of their Bodies, and afterwards to the Uſe of the Heirs Female of their Bodies, and afterwards dies before a Surrender, having a Son and a Daughter; a Surrender by the Son bars the Intail to the Daughter, where a Cuſtom to bar by Recovery does not appear, and then a Surrender is ſufficient. *R.* 2 *Ver.* 704.

So, if a Surrender be refuſed by the Lord of the Manor, a Deviſe without a Surrender ſhall be a Bar to the Truſt in Tail. *R.* 2 *Ver.* 585.

But, if an Eſtate be in Truſt for *A.* for Life, and afterwards in Truſt for *B.* in Tail, Remainder over; a Recovery by *B.* is not a Bar; for it would not be a Bar, if the Eſtate had been executed. *D.* 2 *Ca. Ch.* 64. *Eq. Abr.* 256.

So, if a Fine be decreed for a particular Purpoſe, it does not operate in Equity to another Intent. *R. Ca. Ch.* 49. 2 *Ver.* 56.

So, if a Father covenants to levy a Fine to the Uſe of himſelf in Tail Male, and afterwards to the Uſe of the Heirs Female by the Wife, whom he intends to marry, and dies before a Fine levied, having a Son and a Daughter by his Wife, and the Son covenants to levy a Fine for Payment of Debts; the Daughter ſhall not be barred of the Equity of the Eſtate-tail by the Covenant of the Son, without a Fine levied by him. *R. per Cowper*, 2 *Ver.* 704.

So, if Tenant in Tail, for a valuable Conſideration, covenants to ſuffer a Common Recovery, and dies in Execution for Non-performance of a Decree to do it; the Iſſue in Tail ſhall not be bound to do it. 1 *Ver.* 306.

A Decree againſt a Tenant in Tail to foreclose his Equity of Redemption, binds the Iſſue in Tail; for it being a Right only in Equity, may be there extinguiſhed. *Ca. Ch.* 220. *Vide Ante*, (Y. 2.)

If Tenant in Tail covenants, that he will not dock the Intail, but afterwards ſuffers a Recovery; a ſpecifick Performance of the Covenant ſhall not be decreed, but the Party ſhall be left to Law for Damages. *R.* 2 *Ver.* 635.

(4 T.) Taxes.

IF a Copyhold be ſurrendered to *A.* provided, that if *B.* pays him 20*l. per Annum* without Deduction, *A.* ſhall re-ſurrender; *B.* ſhall not deduct Taxes. *Dub.* 2 *Ver.* 306.

(4 V.) Trial by Common Law.

When it ſhall be directed.

[THIS Court will grant a new Trial, where a Court of Law will not; tho' the Judge certifies he is ſatisfied with the Verdict: It will grant it to introduce new Evidence, or anſwers to Evidence; in Matters of Inheritance, in perſonal Demands of Value, in Forgeries; wherever the Conſcience of the Court is not ſatisfied with the Grounds on which the Determination is made at Law, or an Objection is made and ſupported by Proof. *Stace* v. *Mabbot*, 2 *Vezey* 552.] *Vide Ante*, (X.)

Chancery will direct a new Trial, after a Verdict, when it could not be by the Rule of Law: As, after a Verdict for an Avowant in *Replevin*, (which is concluſive) upon the Seiſin of the Grantor of a Rent-charge, the Court will direct another Trial. *R. upon an original Bill.* 2 *Vent.* 351, 2.

If Evidence was concealed at a former Trial. *Ch. R.* 41.

If a Verdict, upon a *Non eſt Factum*, is obtained by Surprize, when the Witneſſes are dead. 2 *Ver.* 240.

Or a Diſcovery is afterwards made of an Alteration in a Regiſter, *&c.* 2 *Ver.* 285.

So, where a Queſtion remains at Law, it ſhall be ſent to a Trial: As, where a Settlement is by Way of Uſe, and not a Truſt, and a Queſtion ariſes, whether the Condition be broken, without Notice. 2 *Ca. Ch.* 109.

[The Court will not determine a Fraud in procuring a Will, without directing a Trial at Law. *Webb* v. *Claverden*. *M.* 1742. 2 *Atkyns* 424.]

So, where *D.* has Deeds in his Cuſtody, and will not reſtore them. *Ch. R.* 41, 42.

And *D.* ſhall be obliged to produce ſuch Deeds. *Ch. R.* 42.

If former Trials upon the ſame Iſſue have gone a contrary Way. 2 *Ver.* 378, 419.

[After Trial in Ejectment, neither Party ought to bring a new Ejectment without Leave of the Court; yet if there have been two Trials by Order and Leave of the Court, and Verdict againſt Verdict, and the Cauſe ſet down to be heard, and one Party brings new Ejectment, the Court will excuſe the Irregularity, as it will not occaſion Delay. *Sands* v. *Sands*, *T.* 1750. 1 *Vezey* 495.]

[The Court for the more ſolemn Determination, will ſometimes direct a new Trial, without ſetting aſide the firſt Verdict, and then the firſt Verdict may be given in Evidence. *Baker* v. *Hart*, *T.* 1747. 3 *Atkyns* 542. 1 *Vezey* 28.]

So a Court of Equity may direct the Trial, in what County it pleaſes. *R.* 2 *Lev.* 33.

If a Trial be directed, the Parties muſt admit all that by the Decree is directed to be admitted, otherwiſe they may be committed. *Ca. Ch.* 267.

But after a Trial at Law, no Cauſe ſhall be allowed for a new Trial, which would not be ſufficient for a Bill of Review; as, Neglect of having his Witneſſes. *R. Ca. Ch.* 43.

Want of Evidence known at the Time. *Ibid.*

[The Court will not grant a new Trial, on a Suggeſtion that the Party was not apprized of a particular Evidence, and therefore not prepared to give an Anſwer; as if one ſwears that a material Witneſs was not in *England* at the Time he ſwears to a Fact. *Richards* v. *Symes*, *T.* 1742. 2 *Atkyns* 319.

That the Defendant himſelf knew of a Matter written by him in a Letter before the Trial, which if it had been proved, the Verdict ought to have been for Plaintiff. *R. Ca. Ch.* 65.

That the Trial was not in an indifferent County. 2 *Ver.* 437.

So, if a Trial be upon a Point directed by the Court, which was not directly in Iſſue, there ſhall not be a new Trial for that Cauſe. 2 *Ca. Ch.* 41.

[The Court will not direct a new Trial after a Verdict found for a *Modus*, becauſe the Judge would not admit as Evidence an old Deed in the Chapter-houſe at *Weſtminſter*, ſaid to be the Record of a Cauſe determined before the Pope's Delegate. *Colegave* v. *Juſon*, *M.* 1744. 3 *Atkyns* 197.]

Or, if a Trial was, whether a Conveyance was fraudulent againſt *A.* who claimed by Articles, and by Order was to be admitted a Purchaſer; tho' a Settlement purſuant to the Articles was not ordered to be admitted, without which *A.* could not be a Purchaſer by Law. *Ca. Ch.* 217.

(4 W.) Truſt.

(4 W. 1.) The Nature of it.

CHANCERY only will compel the Performance of a Truſt.

A Truſt is a meer Confidence, collateral to the Land, and diſtinct from it.

To which there are two Incidents inſeparable; *viz.* Privity in Eſtate, and Confidence in the Perſon. *Hard.* 469, 488.

An Uſe at *Common Law* was a Truſt, and executed only by the *Chancery*.

So now, all Uſes, which are not executed by the *St.* 27 *H.* 8. 10.

A Truſt may be aſſigned or transferred by Grant, *&c.*

There ſhall be *Poſſeſſio Fratris* of a Truſt. *Hard.* 488, 491.

Ceſtuy que Truſt ſhall be impanelled upon a Jury.

So a Truſt ſhall be forfeited. *Vide Forfeiture*, (B. 1, 2.) *Utlagary*, (D. 2.)

[If *A.* being in Poſſeſſion of Office of Clerk of the Crown in *B. R.* procures *B.* who has alſo a Life in it to Surrender, and ſolicits a Patent for himſelf and *C.* and takes a Note from *C.* promiſing to declare a Truſt for *A.* and the Patent is afterwards obtained, and *A.* dies without calling for a Declaration of Truſt, and refuſing to have any Thing concerning it inſerted in his Will, of which he makes *C.* one of the Executors, yet the Note ſhall be a ſufficient Declaration of Truſt. *Per Talbot* C. reverſing a Decree of *Jekyll* M. R. *Bellamy* v. *Burrow*, *T.* 9 *G.* 2. *C. T. T.* 97.]

(4 W. 2.) Truſt of Land; What ſhall be.

(4 W. 2.) Expreſs.

If a Man articles with another for the Sale of Land, the Vendor ſtands ſeiſed in Truſt for the Purchaſer. *Vide Ante*, (4 I. 1.)

So a Deviſe to *A. to be given to his Children as he ſhall think convenient, I ſolely truſting to his Honour and Diſcretion to give what will be neceſſary for them*, ſhall be a Truſt for his Children. *Mod. Ca.* 111.

So, if the Deviſe be *to diſpoſe and employ upon himſelf and his Son*, it ſhall be a Truſt to diſpoſe to his Son, and not to a Stranger. *Per* 2 *J. Mo.* 57. *Dal.* 58.

Or, *To diſpoſe of at his Pleaſure, and give to one of his Sons.* R. Jon. 137. Lat. 9, 39.

If a Man deviſe to his Executor, during the Minority of his Heir, for Payment of Portions and Legacies, and to be accountable to the Heir for the Surplus; it ſhall be a Truſt as to the Surplus for the Heir. 1 *Ch. R.* 251.

So, if Land be deviſed to the Heir, on Condition to be ſold; tho' the Condition be void, yet it ſhall be a Truſt in the Heir to ſell. *Ca. Ch.* 177.

If

If a Deviſe be to *A.* and *B.* in Truſt for a *Feme Covert*, and her Heirs, and that *A.* and *B*, diſpoſe of the Rents and alſo of the Inheritance, as ſhe ſhall appoint; this ſhall be a Truſt, and not an Uſe executed by the *St.* 27 *H.* 8. 10. 1 *Ver.* 415.

[If *A.* deviſes to Truſtees and their Heirs, on Truſt by Rents or Sale to pay Debts, and then to *B.* for Life without Waſte, to Truſtees, to ſupport, *&c.* to the Heirs of his Body, to *A.*'s right Heirs; this is a Truſt in Equity, and not an Uſe executed by the Statute. *Bagſhaw* v. *Spencer*, *M.* 1748. 1 *Vezey* 142.]

If *A.* purchaſes a Copyhold for himſelf, his Wife and Daughter; it ſhall be a Truſt for them, and the Huſband cannot ſurrender. *R. Pr. Ch.* 1.

So, if a Conveyance be void, being upon a Truſt, it ſhall be ſupported in Equity: As, if Tenant *pur auter Vie*, conveys to *A.* and *B.* and their Heirs, *Habend.* for Years, upon Truſt for Payment of Debts. *Ca. Ch.* 249.

If a Bargain and Sale be to *A.* and his Heirs to the Uſe of *B. &c.* tho' there cannot be an Uſe upon an Uſe, yet it ſhall be a Truſt for *B.* *Dub. Ca. Ch.* 115.

If *A.* deviſes Tithes to all, who ſerve the Cure in the Pariſh; it ſhall be a Truſt for them. 2 *Vent.* 349.

Truſt in Tail how barred, *Vide Ante*, (4 S. 4.)

So, if a Teſtator deviſes to *A.* who confeſſes that the Teſtator ſaid, *that he might do ſo and ſo to his Heir*, and explains, that by thoſe Words the Teſtator intended, that he ſhould pay him 40*l.* if he behaved well; it ſhall be a Truſt to pay it. *R.* 2 *Ver.* 559. (4 W. 3.) Implied.

So, if a Mortgage be aſſigned to *A.* without any Truſt declared, and *A.* confeſſes that the Truſt was for *B.* it ſhall be in Truſt for him, and not reſult to *A.* 2 *Ver.* 294.

If Money be delivered to *A.* and at the Time the Deliverer ſays, *I give you this to be a Father to my Child, paying her the Intereſt during her Life, and after to her Children, and if ſhe have none, the Principal and Intereſt to your Wife*; and after the Death of the Donor, *A.* makes a Writing declaring the Truſt to the ſame Effect; it ſhall be a good Declaration of the Truſt ſince the *St.* 29 *Car.* 2. 3. *R. in the Exch. Mich.* 6 *Geo.* 2.

So, if *A.* articles for a Purchaſe and to pay the Purchaſe Money, but the Conveyance is made to *B.* who borrows and pays the Purchaſe Money, and gives a Mortgage for it, but afterwards the Mortgage is diſcharged by *C.* and then *A.* agrees to indemnify him, and afterwards *B.* deviſes this Land for Payment of Debts; it ſhall be a Truſt for *A.* tho' the Creditors of *B.* are thereby defeated, and there was no expreſs Declaration of the Truſt for *A.* *R.* 2 *Ver.* 167.

If a Rent-charge or Annuity is granted out of the Eſtate of *B.* to *A.* to be paid in the firſt Place, and *A.* never demands it for forty Years; it ſhall be preſumed to be in Truſt for *B.* 2 *Ch. R.* 220.

If a Debtor to the King purchaſes in the Name of his Son, and enjoys during his Life; it ſhall be a Truſt for the Father. *R. Hard.* 126.

So, if a Man purchaſes Land in the Name of another, the other ſhall be a Truſtee for the Purchaſer.

[If a Man purchaſes Lands in the Name of another, it is a reſulting Truſt. *Lade* v. *Lade*, *T.* 16 *G.* 2. *Wilſ.* 21.]

[Tho there is no expreſs Truſt in a Deed, yet if it can be collected from Circumſtances ariſing out of the Aſſignment itſelf, the Court will permit Parol Evidence to explain it; for tho' there can be no Parol Declaration of a Truſt, yet Parol Evidence may be admitted in Avoidance of a Fraud. *Hutchins* v. *Lee*, *H.* 1737. 1 *Atkyns* 447.]

[He who pays the Purchaſe-money, clearly proving it, has a reſulting Truſt; or if it can be ſhewn by Parol Evidence, that the pretended Owner was in ſuch Circumſtances that it was impoſſible he ſhould be the Purchaſer. *Willis* v. *Willis*, *M.* 1740. 2 *Atkyns* 71.]

And

And that, ſince the *St.* 29 *Car.* 2. 3. *R.* 2 *Vent.* 361. *R. in Scac. Mich.* 4 *Ann. inter Freeman and Allen. Semb.* 1 *Ver.* 366, 7.

Tho' the Purchaſe be in the Name of his Son, if he was before advanced by his Father. *R.* 2 *Ca. Ch.* 232.

[A Father advances his Son in Marriage, has other Children unprovided, ſells an Eſtate, receives Part, takes Security for the Reſt in his own and Son's Name, receives Intereſt and Part of Principal without Son's oppoſing, dies, Executor receives Intereſt, the Son writing Receipts for it; the Son is a Truſtee for the Father. *Pole* v. *Pole, H.* 1747. 1 *Vezey* 76]

So, if Money is lent by *A.* and a Bond taken in the Name of his Son an Infant, to whom *A.* deviſed a Moiety of his Eſtate; the Bond ſhal be taken as his Perſonal Eſtate. 1 *Ch. R.* 86.

If the Truſtee of a College Leaſe renews the Term in his own Name; this ſhall be for the Benefit of the *Ceſtuy que Truſt. Ca. Ch.* 191. *Mod. Ca.* 67. 1 *Ver.* 276, 484.

[*A.* the laſt Life in a Biſhop's Leaſe, agrees with *B.* to ſurrender it to take another for the Lives of *A. B.* and *C. B.*'s Son to be in Truſt for *C.* the Conſideration is all paid by *B.* the Leaſe made to *A.* and his Heirs, and *A.* one Day after executes Deed-poll declaring the Truſt to be after his Death to *B. C.* and their Heirs; here is no reſulting Truſt for *B.* but after *A.*'s Death *B.* ſhall have it for Life, and then *C. Crop* v. *Norton, M.* 1740. 2 *Atkyns* 74.]

So, if an Executor in Truſt renews a Leaſe with his own Money, it ſhall be for the Benefit of the *Ceſtuy que Truſt*, ſubject to the Payment of the Fine and Charges upon the Renewal. *Ca. Ch.* 191.

If *A.* takes a Mortgage in the Name of *B.* and by *Parol* ſays, *that he intends* B. *ſhall have it*; if it be not paid in his Life, but afterwards by his Will he deviſes another Eſtate to *B.* and the Reſidue of his Eſtate to his Executor, the Mortgage ſhall be in Truſt for the Executor. *R.* 1 *Ch. R.* 216.

[The Court would conſider the next Remainder-man as Truſtee for a poſthumous Son, for the intermediate Rents of ſettled Lands between the Father's Death and his Birth, as they would Truſtees to preſerve Contingent Remainders over; even ſuppoſing that by Law he had not a Right to ſuch Rents. *Baſſet* v. *Baſſet, M.* 1744. 3 *Atkyns* 203.]

But by the *St.* 29 *Car.* 2. 3. All Declarations, or Creations of Truſt ſhall be manifeſted by ſome Writing ſigned by the Party enabled to declare ſuch Truſt, or by his Will, or elſe ſhall be void; provided, where a Conveyance ſhall be made of Land, by which a Truſt may ariſe or reſult by Implication, or Conſtruſtion of Law, or be transferred or extinguiſhed by Act, or Operation of Law, ſuch Truſt ſhall be of like Effect as if the ſaid Act had not been made.

And by the *St.* 4 *Ann.* 16. A Declaration of Uſes by Deed, after a Fine or Recovery, ſhall be as good as if this Act had not been made.

And therefore, a Leaſe for Years to *A.* ſhall not be averred to be in Truſt for him and *B. Semb.* 1 *Ver.* 108.

Yet, if a Son prevails on his Mother, made Executrix by the Will of his Father, to get a new Will executed, and himſelf to be made Executor, and he acts for his Mother; it ſhall be a Truſt for the Mother, tho' there be no Writing. *R.* 1 *Ver.* 296.

If *A.* deviſes to *B.* and *C.* 1500*l.* upon ſecret Truſts to them declared, and *B.* by Letter to *C.* mentions the Truſts; it ſhall be a ſufficient Declaration. *R.* 2 *Ver.* 107.

If a Man deviſes to his Nephew, and afterwards purchaſes Land, and ſays to his Heir, *that he will have his Nephew take it*; tho' he has not declared it by Writing, and the Heir permits it for eleven Years, it ſhall be a good Execution of the Truſt. *R. Eq. R.* 11.

What ſhall be a Truſt for Payment of Debts, or Legacies, *Vide Ante*, (3 A. 3.) *Poſt*, (4 W. 14.)

What, for making a Charge upon Land, *Vide Appointment, Ante*, (2 F. 1.)

What, for Charitable Uſes, *Vide Ante*, (2 N. 1, &c.)

What ſhall be a Truſt for a Wife, *Vide Ante*, (2 M. 9, 10.)

(4 W. 4.) What not.

But if a Father ſells his antient Eſtate, which would have deſcended to his Son, and with the Money purchaſes other Land, and the Conveyance is made to him and his eldeſt Son, and their Heirs, without any Truſt expreſſed; this ſhall not be conſtrued to be a Truſt for the Father, but an Advancement for the Son, who ſhall hold by Survivorſhip againſt the Deviſee of the Father. *R.* 15 *Car.* 2. *Ca. Ch.* 28.

So, if a Father purchaſes in the Name of his Son and Heir apparent (who has no other Eſtate) and afterwards manages the Land as his own, and ſometimes it is ſaid to be the Land of the Father, ſometimes of the Son, but the Son deviſes it to the Father, who proves the Will; this is not a Truſt, but an Advancement to the Son. *R. Ca. Ch.* 296. 3 *Ch. R.* 9.

So, if he purchaſes in the Name of his Son, not advanced, and afterwards takes the Profits, and makes Leaſes, without any Truſt expreſſed, before or at the Time of the Purchaſe. 2 *Ca. Ch.* 231.

So, if the Father, Lord of a Manor, grants a Copyhold to his Son, tho' the Father afterwards takes the Profits, always with the Conſent of the Son, it ſhall not be a Truſt for the Father. *R. Ca. Ch.* 261. 1 *Ver.* 467.

Or, purchaſes a Copyhold in the Name of his Son, who is admitted. *R. Ca. Ch.* 310. *R.* 2 *Ver.* 19.

So, if a Father purchaſes in the Name of his Son and Heir, without declaring a Truſt before or at the Time of the Purchaſe, tho' afterwards he declares a Truſt for himſelf. 2 *Ca. Ch.* 231.

Tho' he takes a Declaration of Truſt from the Son, when ſick, if the Son afterwards continues the Poſſeſſion; for the Declaration was a Fraud. *R.* 2 *Ver.* 436.

So, if the Grandfather, after the Death of the Father, takes a Bond in the Name of his Grandſon, an Infant; it ſhall not be a Truſt for the Grandfather, but a Proviſion for the Grandſon; for he was then under the immediate Care of the Grandfather. 2 *Ca. Ch.* 26.

So, if he makes a Leaſe to the Grandſon. *Ibid.*

So, if a Father by Leaſe and Releaſe ſettles an Eſtate to the Uſe of himſelf for Life, then to his Wife for Life, then to his Son in Fee; the Remainder to the Son ſhall not be a Truſt for the Father, tho' the Father on the ſame Day deviſed the Eſtate by his Will, ſubject to the Payment of his Debts. *R.* 2 *Ver.* 28.

If *A.* purchaſes a Copyhold, and takes a Surrender to himſelf, his Wife and Daughter, and afterwards mortgages; the Mortgagee ſhall have no Relief againſt the Wife, or Daughter; for the Wife takes with her Huſband a Moiety by Intireties, and the Daughter the other Moiety. *R.* 2 *Ver.* 120.

So, if *A.* takes a Copyhold to himſelf, his Wife and *B. ſucceſſivé*; *B.* ſhall not be a Truſtee for *A.* without a Cuſtom that *A.* ſhall diſpoſe of it. *R.* 2 *Ver.* 252, 264.

If a Conveyance be to an Uſe, it ſhall not be averred to be upon a ſecret Truſt, if the Truſt be not expreſſed. *R.* 4 *Inſt.* 86.

If a Settlement be in Confirmation of a Will, whereby the Land becomes ſubject to the Legacies given by the Will, it ſhall not be a general Truſt for the Teſtator. *R.* 3 *Ca. Ch.* 65, 127.

If a Truſt be expreſſed by a Deed, Proof ſhall not be allowed to ſhew a different Truſt. 1 *Ch. R.* 110.

If Money, found after the Death of an Inteſtate, who leaves a Wife and two Daughters, be by the Wife veſted in a Purchaſe of Lands, ſettled to the Uſe of herſelf for Life, and afterwards to the two Daughters in Tail, Remainder to the Heirs of the Wife; if the Daughters die without Iſſue, the Executor or Adminiſtrator of the Survivor ſhall not have a Decree for two Thirds of the Money; tho' he would have had it, if it had not been veſted in a Purchaſe; for Money ſhall not be followed after it is veſted in a Purchaſe. *R.* 2 *Ver.* 440.

So, if *A.* borrows Money to diſcharge the Eſtate of an Infant, the Eſtate of the Infant ſhall not be charged with it. *R.* 2 *Ver.* 480.

If *A.* enjoys a Term for 27 Years, and by his Will declares, that the Term was taken by him in Truſt for *B.* who is a Papiſt, and therefore deviſes the Remainder to him: The Proteſtant next of Kin ſhall not have an Account of the Profits in the Life of *A.* for a Truſt ſhall not be intended without other Proof. *R. Eq. Ca.* 146. *

* 2d Part of 2 *Mod. Ca.*

So, if a Man deviſes Land to his Wife, *in Hope ſhe will leave it to his Son*; this ſhall not be a Truſt for the Son. *Ch. Ca.* 310.

If he deviſes Money to *A. for ſuch Uſes, as he ſhall direct by Note*, and makes no Note; it ſhall not be a Truſt for the Executor or Legatees. *R. Ca. Ch.* 198.

If he deviſes his Perſonal Eſtate to his Wife, *not doubting ſhe will be kind to his Children*; it ſhall not be a Truſt for them. *R. Eq. Ca.* 122. *

* 2d Part of 2 *Mod. Ca.*

If *A.* by his Anſwer denies the Truſt of a Settlement, a Bill brought by the Executors or Legatees of *A.* afterwards for an Execution of the Truſt ſhall be diſmiſſed. 1 *Ch. R.* 270.

But if the Defendant by his Anſwer confeſſes a Truſt, after ſuch a Sum paid; it ſhall be decreed, tho' it be not proved, nor charged by the Bill. *R.* 2 *Ver.* 288.

(4 W. 5.) Truſt of Goods; What ſhall be.

So, if a Man gives Goods or Chattels to another, upon Truſt, to deliver them to a Stranger, *Chancery* will oblige him to do it.

So, if a Wife lends Money to another, and the Note for it expreſſes, that it ſhall be diſpoſed of at her Pleaſure; it is a Truſt, and ſhall be decreed accordingly *R.* 2 *Vent.* 345.

If a Wife ſaves Money out of her ſeparate Maintenance, and puts it to Intereſt, without the Aſſent of her Huſband, upon Bond in the Name of *B.* in Truſt for her Niece; the Money ſhall be in Truſt for her, tho' the Huſband was not privy. 1 *Ch. R.* 126.

[If a Solicitor makes an abſolute Conveyance from a Woman parted from her Huſband, and having a Child, of 1000*l.* (all ſhe has) to himſelf for Services done, and Favours ſhewn, and ſhe ſays afterwards ſhe has given it him, but he will take Care of herDaughter, then, that ſhe has given all to her Daughter; and the Solicitor denies he has any Deed when the Huſband pays his Bill, (in which is a Charge for peruſing the Draft of it) and ſays in a Letter to the Huſband, that the Wife having a Confidence in his Honour towards the Child, and being ſenſible of Services done, *&c.* did execute, *&c.*; it ſhall ſtand as a Security for any Sums ſtill due to him, and as to the Surplus as a Truſt for the Child, or if dead, for the Father her Repreſentative. *Saunderſon* v. *Glaſs*, *P.* 1742. 2 *Atkyns* 296.]

So, if a Man deviſes Goods and Chattels to *A.* for Life, and afterwards to *B.* this ſhall be a Truſt for *B.* *R.* where the Chattels were Rarities, which he intended ſhould go as Heir-looms, and were deviſed to the Uſe of *A.* for his Life. *Ca. Ch.* 130. 1 *Ch. R.* 110. *R.* 2 *Ver.* 245, 331. *Vide Ante*, (4 G. 1.)

If a Man gives his Perſonal Eſtate to *A.* in his Life-time, and afterwards directs him to take Care of his Funeral, and to pay two Legacies to his Nephew; *A.* has it only as a Truſtee. *R. Eq. Ca.* 115. *

* 2d Part of 2 *Mod. Ca.*

If a Man deviſes his Perſonal Eſtate to the Son, with which his Wife is *enſeint*, and if ſuch Son dies before Twenty-one or Marriage, to his Brother; if the Son dies, the Brother ſhall have it. 1 *P. W.* 502.

If a Man levies more than he ought for his Debt, he ſtands a Truſtee for the Surplus to the Debtor. *Semb.* 2 *Ca. Ch.* 184.

So, if a Bond be given to *A.* as a Truſtee for *B.* and *A.* by Practice induces *B.* to anſwer upon Oath in *Chancery*, that it was for the Uſe of *A.* and not in Truſt; yet, upon Proof of the Fraud, the Truſt ſhall be decreed. *R. Ca. Ch.* 134.

So, if *A.* by a former Anſwer, acknowledged a Bond to be ſatisfied with Intent to avoid a Sequeſtration; yet in Equity he ſhall be relieved. *R. Ca. Ch.* 154.

If *A.* to whom a Bond is given in Truſt for *B.* becomes *Felo de ſe*, *B.* ſhall be relieved by the *St.* 33 *H.* 8. 39. *Hard.* 176. *Vide Uſes*, (F.)

[If

[If *A.* by Will leaves a Bond to *B.* and by a ſubſequent Will leaves it to *C.* on a Promiſe that *C.* will at her Death leave it to *B.*; and after *A.*'s Death, *C.* makes a Deed of Gift of it to *B.* to take place at her Death, and declares ſhe would not cheat *B.* and that ſhe did it in regard to her Promiſe, and then dies, and makes *D.* (the Obligor) her Executor, the Court will decree *D.* to pay the Bond to *B.* *Drakeford* v. *Wilks*, *T.* 1747. 3 *Atkyns* 539.]

A Truſt of a Perſonal Eſtate may be averred by *Parol.* 1 *Ver.* 31.

If a Man has only an Equity in Land, it may by *Parol* be ſubjected to the Payment of Debts. 1 *Ver.* 45.

(4 W. 6.) Aſſignment of a Truſt.

So, a Truſtee, with the Aſſent of his *Ceſtuy que Truſt*, or by the Direction of the Court, may aſſign his Truſt to others.

Or, may releaſe to his Co-Truſtees.

And ſhall be decreed ſo to do, if he refuſes the Truſt. *Ch. R.* 258.

So, if a Deviſe be to ſeveral Truſtees, and, when they are reduced to three, that they ſhall aſſign to others; the Court will oblige them, when reduced, to aſſign to others.

And if they do it not till all, except one, are dead, the Survivor alone may aſſign to others, and the Truſt ſhall not reſult to the Grantor, for Want of an Aſſignment. *R.* 2 *Ver.* 749.

But if a Truſtee aſſigns without the Aſſent of the *Ceſtuy que Truſt*, or of the Court, to one, who becomes inſolvent, he ſhall anſwer for his Default. *R. Bridg.* 38.

So, if a Truſt devolves to the Heir, he may transfer it, or accept it upon Terms, *viz.* that he ſhall be reimburſed his Charges out of the Truſt Eſtate, and ſhall not anſwer for more than he receives, nor for the Loſs of Money put out at Intereſt purſuant to the Will, and ſhall account yearly. *Ch. R.* 32, 258.

If an Adminiſtrator aſſigns a Term, in Truſt for himſelf, and the Adminiſtration is afterwards revoked, upon a Citation, or Appeal; the Aſſignment ſhall be avoided by a Decree in *Chancery* at the Suit of the new Adminiſtrator. 2 *Ca. Ch.* 129.

(4 W. 7.) Removal of a Truſtee.

So a Truſtee may be removed from the Truſt, if the others will not join with him, tho' he does not conſent to it. *R.* 2 *Ca. Ch.* 131.

(4 W. 8.) Security required of him.

So a Truſtee ſhall be bound to perform his Truſt.

If Goods are deviſed to *A.* for his Life, and afterwards to *B.* *A.* being a Truſtee, ſhall be obliged to give Security to deliver them to *B.* 1 *Ch. R.* 110.

(4 W. 9.) Truſt; How it ſhall be executed.

If a Man deviſes an Eſtate to his Wife, to be diſtributed during her Widowhood amongſt his Daughters by a former Wife, and ſhe marries, and afterwards diſtributes moſt to one Daughter; it is not good; for a Truſt ought to be preciſely purſued according to the Intent of the Maker, and therefore the Diſtribution muſt be before her ſecond Marriage. *Ca. Ch.* 310. (4 W. 9) Purſuant to the Intent. *Vide Poſt*, (4 W. 13.)

If Land be deviſed in Truſt for *A.* and *B.* rateably, and that it ſhall be conveyed to them *in like Sort*, it ſhall be conveyed to them in Common. *R.* 1 *Lev.* 232.

If a Truſt be to pay 200 *l.* to two of the Daughters of *B.* born or to be born; *A.* then born ſhall have 100 *l.* tho' *B.* has two Daughters afterwards born. *R.* 1 *Ch. R.* 189.

If

If a Man deviſes 1500 *l.* in Truſt for *A.* for Life, and if ſhe ſurvives her Huſband to be diſpoſed of to *A.* but if her Huſband ſurvives, to go among the Children of *B.* as *A.* directs: *A.* makes no Direction but ſurvives; *B.* had five Children at the Time of the Deviſe, but four die having Iſſue; the whole 1500 *l.* goes to the Child who ſurvives, for Grandchildren cannot take by a Deviſe to Children, if any Child is living; otherwiſe if all the Children are dead. *R. Cont. per Jefferies, but per Commiſſioners Acc.* 2 *Ver.* 108.

If a Deviſe be of 300 *l.* a-piece to two Daughters, and to the third Daughter as much as his Executor pleaſes; ſhe ſhall have 300 *l.*

[When there is a general Truſt of Money for a Society, a particular Member cannot ſet off his private Debt againſt the Share he may be intitled to on a Contingency. *Lee* v. *Carter*, *M.* 1740. 2 *Atkyns* 84.]

(4 W. 10.) When Money ſhall be decreed *in Specie*. *Vide Poſt*, (4 W. 16.)

If a Man deviſes Money to be veſted in Land, to be ſettled to *A.* for Life, and afterwards to *B.* in Tail, and afterwards to *C.* in Tail; if *A.* dies and *B.* is under Age, the Money ſhall not be decreed to *B.*

So, if *B.* be of full Age, tho' he might by Recovery bar him in Remainder; for perhaps he will not ſuffer a Recovery, or may die before he does. *R. Cont. but per Cowper Acc.* 2 *Ver.* 552.

[If Money is articled to be laid out in Land, to be ſettled on *A.* for Life, Remainder to his firſt, *&c.* Sons, Remainder to his right Heirs, and *A.* dies, leaving only Son; the Court will not order him the Money on Petition. *Per King* C. *Eyre's Caſe*, *T.* 1726, and *Onſlow's Caſe*, *H.* 1732. *Cont. per Parker* C. *Short* v. *Wood*, and many other Caſes, 3 *P. W.* 13.]

So a Conveyance ſhall be decreed to *Ceſtuy que Truſt* in Tail only for an Eſtate-tail, and not in Fee. *R.* 2 *Ver.* 428.

So, if Money is to be veſted in a Purchaſe to the Uſe of Huſband and Wife and the Survivor for Life, and afterwards to the Heirs of their Bodies, and for Default, to the Heirs of the Body of the Wife, and afterwards to *B.* the Brother of the Wife and his Heirs; the Wife dies without Iſſue, and then the Huſband dies before the Purchaſe made; the Money ſhall be decreed to *B.* who was alſo Adminiſtrator *de bonis non*, *&c.* to the Wife, and not to the Adminiſtrator of the Huſband, tho' he ſurvived. *Cont. per Trevor and Rawlinſon, but Hutchins Acc.* 2 *Ver.* 227.

If *A.* deviſes 500 *l.* a-piece to his two Daughters, to be laid out in a Purchaſe and ſettled upon his Daughters, and if either of them die before Marriage, 150 *l.* or Land to that Value, to go to the Survivor; one of them marries and ſurvives; her Huſband ſhall have the Whole given to his Wife, and the Survivorſhip; for it ſhall be regarded as Money. *R.* 2 *Ver.* 284.

[If 3000 *l.* is veſted in Truſtees, 2000 *l.* for the eldeſt Son, and 1000 *l.* for the younger Children, and there is a Proviſo in the Article, that the 3000 *l.* ſhall be laid out in Land, to be to the ſame Uſes, and ſubject to the ſame Conditions as are declared concerning the Money, and Part of the 3000 *l.* is accordingly laid out; this ſhall be conſidered as Money, and not as Land. *Combe* v. *Combe*, *T.* 1741. 2 *Atkyns* 185.]

So, if Money be agreed to be veſted in a Purchaſe to ſuch and ſuch Uſes; every Party ſhall be decreed to have a like Intereſt in the Money as he would have had in the Land, if it was purchaſed. 2 *Ch. R.* 409.

But where Money is decreed to one, who would be Tenant in Tail of the Land when purchaſed, it ſhall not, after ten Years are elapſed, be reſtored him in Remainder. 2 *Ver.* 552.

If Money be deviſed for a Purchaſe, to be ſettled on a Daughter in Tail, her Huſband ſhall have the Benefit for his Life, tho' the Wife died without Iſſue before the Purchaſe made, if there was Iſſue born; for the Huſband would be intitled to be Tenant by the Curteſy. *R.* 2 *Ver.* 536.

So, if Money be deviſed for a Purchaſe to be ſettled upon *A.* for Life, afterwards to Truſtees for his Life, afterwards to the Heirs of the Body of *A.* Remainder to others; it ſhall be decreed to be ſettled on the firſt and other Sons of *A.* *Per King*, 5 *Geo.* 2. 33, 34.

[If by Marriage-articles Money is to be laid out in Lands to Husband for Life, Trustees to preserve, &c. Wife for Life, their Children, as they or Survivor shall appoint, in Default, equally, if but one, to that and the Heirs of the Body, in Default, to Husband in Fee; and they have Issue only one Daughter, who marries *A.* and the Money is paid to them, she not being *sui juris*, nor seperately examined, and she dies; the Money shall notwithstanding be considered as Land, and the Sister of the Half-blood shall claim it under her Father. *Cunningham* v. *Moody*, *M.* 1748. 2 *Vezey* 174.]

So a Trust of Land shall be decreed pursuant to the Nature of the Land; as, if Land be of the Nature of *Gavelkind*, or *Borough English*, it shall be decreed to all, or to the Youngest Son. *Vide Uses*, (D. 2.)

If a Trust be of a Copyhold, where by Custom the Eldest Daughter takes the Whole; it shall all be decreed to the Eldest Daughter. *R.* 2 *Rol.* 780. *l.* 40.

So Trusts are to be construed by the same Rules, as legal Estates. 1 *P. W.* 143.

How a Trustee shall account for Money, or the Profits of the Trust-Estate, *Vide Ante*, (2 A. 1, &c.)

How he ought to pay Legacies, or other Money, *Vide Ante*, (3 G. 3, &c.)

When a Trustee may sell for Performance of the Trust, *Vide Ante*, (3 A. 6, 7.)

(4 W. 11.) When, at the Discretion of the Trustee.

But where a Trustee has Power at his Discretion, *Chancery* will not controul his Judgment; as, if a Man devises his Lands, Goods and Chattels to *A.* upon Trust that he gives them to his Children and Grandchildren according to the Demerits, and he gives all to one; the others shall not be relieved, for the Testator submitted the Whole to his Judgment. *R. Ca. Ch.* 309. 1 *Ver.* 356.

[If Trustees having an absolute *discretionary* Power will not act, the Court cannot act for them, unless in Case of a Charity. *Semb. Gower* v. *Mainwaring*, *M.* 1750. 2 *Vezey* 87.]

[Otherwise, if a Rule is laid down for their Conduct. *Ibid.*]

If *A.* settles his Lands to the Use of such Child or Children, and in such Proportion as he shall appoint by Will, &c. If *A.* gives an Annuity to the Youngest Son and Portions to the Daughters, it will be well, tho' he does not distribute the Land itself among them. *Semb.* 2 *Ver.* 80.

If he gives 100*l.* to each of his Children, and if one dies his Portion to go to one or more of the Survivors as his Executor thinks proper; the Executor may give the Whole to one. *R.* 2 *Ver.* 513.

But if a Devise be to an Executor of Land to be sold for Payment of Debts, when the Executor thinks proper; he cannot sell, if there are Personal Assets sufficient. *Ca. Ch.* 281.

Nor more than is necessary; for their Discretion ought to be regulated by Equity. *Semb. Ca. Ch.* 281.

If a Devise be to a Wife, upon Trust that she shall dispose of it only for the Benefit of her Children, she ought to make an equal Distribution. *R.* 1 *Ver.* 67, 355, 414.

[If Testator leaves his Personal Estate to be disposed of among his Family, as this Court shall think fit, it will do it according to the Statute of Distributions. *Gower* v. *Mainwaring*, *M.* 1750. 2 *Vezey* 110.]

[Yet where Testator has left his Estate to Trustees, to give the Residue among his Friends and Relations, where they shall see most Necessity, and as they shall think equitable, and the Trustees refuse to act, the Court will refer it to a Master to see in what Proportions it shall be distributed to the next of Kin. *Ibid.*

If a Man devises to his Wife, to be distributed between his Daughters as she shall judge meet, having a Daughter by his Wife and another by a former *Venter*, and the Wife gives 1000*l.* to her own Daughter, and only 100*l.* to the other Daughter; the latter shall be aided in Equity. 1 *Ver.* 355. *R. Ch. R.* 355.

If Land be deviſed to *A.* upon Truſt to ſell the Whole or Part for Payment of Debts; if he pays Debts to the Value of the Land, it is a Performance of the Truſt, and *A.* himſelf becomes the Purchaſer. *R. Ca. Ch.* 199.

So, if he pays to the Value of Part with his own Money, he ſhall be a Purchaſer *pro tanto*; for he had Power to ſell the Whole, or Part. *Ca. Ch.* 199.

If a Deviſe be of Land to be ſettled upon ſuch Son of *B.* as the Truſtees ſhall think proper; the Court will give a Day to the Truſtees to make a Nomination; otherwiſe the Court will name which Son they pleaſe. *Ch. R.* 56.

If 400*l.* be deviſed to Executors, to be diſtributed among them and their Brothers, according to their Neceſſity, as the Executors pleaſe; a double Share ſhall be given to the Heir, he having a ſmaller Proviſion. *R. and aff. in Parl.* 2 *Ver.* 421.

If a Leaſe be upon Truſt, that an indefeaſible Eſtate be ſettled to *A.* for Life, and afterwards to his Wife for Life, with Remainders over, and the Land of a Delinquent is ſettled in 1657, and accepted of by *A.* and Proof made that this Land was intended to be ſettled; the Truſt is performed, tho' after the Reſtoration the Land is evicted. *R. Ca. Ch.* 298.

And the Acceptance by the Huſband alſo binds his Wife. *Ca. Ch.* 298.

(4 W. 12.) When Equity with a legal Intereſt ſhall be preferred to meer Equity.

If *A.* has an equal Equity with *B.* and afterwards obtains the legal Intereſt alſo, he ſhall be preferred in Equity to *B.* As, if a Mortgage, Statute, Recognizance, or Judgment be made by *C.* to *D.* and afterwards *C.* makes a ſecond Mortgage to *B.* and a ſubſequent Mortgage to *A.* If *A.* afterwards purchaſes the prior Mortgage, Statute, Recognizance, or Judgment, he ſhall hold the Eſtate, till he is ſatisfied his laſt Mortgage, before *B.* can redeem him. *Vide Ante,* (4 A. 10.)

But if there be Colluſion in *A. B.* ſhall be preferred; as, if *A.* had Notice of the prior Incumbrance, before the Mortgage to him.

So, if an Huſband, having a Term for Years, makes a Mortgage thereof to *D.* and afterwards, in Conſideration of the Cancelling a Bond made for the Benefit of his Wife, by Leaſe and Releaſe ſettles the Lands upon the Wife and her Heirs, and ſhe deviſes to *B.* (who alſo obtained a Releaſe thereof from her Heir at Law) in the Life-time of her Huſband, who afterwards, in Conſideration of a Marriage ſettles the Lands upon *A.* who obtains the prior Mortgage, but denies Notice; yet *B.* who took out Adminiſtration to the Wife ſhall be preferred. *R. Eq. Ca.* 144.

(4 W. 13.) Truſt; How it ſhall be decreed.

(4 W. 13.) According to the Intent of the Maker. *Vide Ante.* (4 W. 9.)

A Truſt ſhall be decreed as near to the Intention of the Maker as may be; and therefore, if it be agreed that Land ſhall be ſettled upon the Wife for her Jointure, and afterwards to the Iſſue of the Wife; it ſhall be decreed to the Huſband for his Life, and afterwards to the Wife, *&c.* for a Jointure imports an Eſtate to the Wife, after the Death of her Huſband. *R. Ca. Ch.* 125.

If Articles upon Marriage are, That Land ſhall be ſettled upon the Heirs of the Body of the Huſband by his Wife; it ſhall be decreed, that the Settlement be, To the Huſband for Life, Remainder to Truſtees to preſerve, *&c.* Remainder to the firſt and other Sons in Tail. *R.* 2 *Ver.* 13, 670, 702.

[If a Man leaves Money to be laid out in Land to be ſettled under ſeveral Limitations to different Branches of his Family, and there are no Truſtees to preſerve Contingent Remainders, the Court will order ſuch Truſtees to be inſerted in the Settlement. *Baſkerville* v. *Baſkerville, H.* 1741. 2 *Atkyns* 279.]

Otherwiſe, if there be a Deviſe upon ſuch Truſt; for the Deviſee ſhall take according to the Words of the Will. *Cont. per Cowper, but upon a Rehearing per Harcourt Acc.* 2 *Ver.* 670. (*Vide* 1 *P. W.* 142.)

[If by Marriage-ſettlement of *A.* and *B.* Money is aſſigned to Truſtees, to be laid out in Land with the Conſent of *A.* and *B.* or the Survivor, to the Uſe of *A.* and *B.* and the Survivor for Life, Remainder to Truſtees, to preſerve, *&c.* Remainder to the firſt and other Sons in Tail-male, Remainder to the Daughters in

in Tail-general, Remainder to the Survivor of *A.* and *B.* in Fee; and there are ſeveral Children, and on the Marriage of the Eldeſt ſon *C.* he covenants to convey this Money (if he ſurvives his Father) to Truſtees, to purchaſe Land for particular Purpoſes; and *A.* by his Will deviſes this Money to *C.* and requires him to give a Diſcharge of all Demands on his Eſtate, which he does, and the Money is paid to him with the Conſent of his Brothers; this Money is not liable to any Intail, nor to be laid out in Land, nor conſidered as a Debt upon *C.*'s Eſtate, but he ſhall have it as his abſolute Property. *Trafford* v. *Boehm*, *H.* 1746. 3 *Atkyns* 440.]

[If a Truſt in Equity is deviſed to *A.* for Life, without Waſte, to Truſtees for *A.*'s Life, to ſupport, *&c.* and to the Heirs of *A.*'s Body, and then to Teſtator's right Heirs; this is a Truſt *executory*, as to the Heirs of *A.*'s Body, and theſe Words ſhall be taken as Words of Purchaſe to fulfil Teſtator's Intention; and *A.* takes only an Eſtate for Life, with contingent Remainders to his Iſſue ſucceſſively. *Bagſhaw* v. *Spencer*, *M.* 1748. 1 *Vezey* 142. 1 *Wilſ.* 238.]

So, if a Deviſe be to Truſtees for Payment of Debts, and that they ſettle the Remainder on his Son and the Heirs of his Body, but take Care that he may not dock the Intail during his Life; it ſhall be decreed to the Son for his Life only, not in Tail. *R.* 2 *Ver.* 526.

If a Settlement be purſuant to Articles, To the Huſband for Life, to the Wife for Life, to the firſt and other Sons of the Marriage in Tail, and afterwards to the Sons of the Huſband by a ſecond Wife in Tail, and then to the Heirs of the Body of the Huſband, where the Articles were to the Heirs Female of the Body of the Huſband; it ſhall be rectified by Decree. 2 *P. W.* 349.

Tho' the Articles were made in the Year 1685, and the Settlement afterwards in the ſame Year, and there was an Acquieſcence for 40 Years, and a Recovery ſuffered, and a Deviſe made by the Huſband. *R. Cont. per Excheq. but reverſed*, 2 *P. W.* 349.

If after Articles a Settlement be made, with a Proviſion of Portions for the Daughters of a former Marriage, the Settlement ſhall be good. 2 *P. W.* 540.

So a Truſt ſhall be decreed according to the Intention of the Party, tho' the Words import a different Conſtruction; as, if a Man deviſes Lands in Truſt for *K.* in Tail, and if ſhe dies without Iſſue, to *B.* for Life; and in another Clauſe ſays, if *K.* dies without Iſſue and *B.* is then dead, *then and not otherwiſe* to A. *in Fee*: *K.* dies without Iſſue, *B.* ſurvives her and dies; the Land ſhall be decreed to *A.* and not to the Heir of the Deviſor; for his Intent was, that *A.* ſhould take, and the Words *(then and not otherwiſe)* mean only, that he ſhall not take till *B.* is dead *R.* 2 *Vent.* 363.

[The Court may decree Truſt-money in Marriage-articles, againſt the Words, to fulfil the Intent; thus, if it is agreed that 1250 *l.* the Wife's Fortune, and 1250 *l.* of the Huſband's ſhall be ſettled in Truſtees, to permit Huſband to receive during their joint Lives, if he dies firſt without Children, the Wife to have the 2500 *l.* transferred to her, if he leaves Children, ſhe to have it for Life only, if they die, her Right to the Whole to revive; if ſhe dies before Huſband, ſhe to diſpoſe of 500 *l.* as ſhe ſhall appoint, in Default, to her Mother if alive, if not, to her Siſter; the Reſt to be at the Huſband's Diſpoſal; and ſhe dies before her Huſband, leaving Son and Daughter, her Siſter (who had an equal Fortune with her) ſhall not have it, but the Court will ſupply the Words (without Iſſue) and it ſhall go to the Son and Daughter. *Targus* v. *Puget*, *H.* 1750. 2 *Vezey* 194.]

[If Money is given in Truſt for the Child of *A.* if he leaves any at his Death, Remainder to *B.* with Power to Truſtees to apply the Produce for Maintenance and Advancement, and *A.* is Sixty, and his Wife Forty, and have no Child, the Court will not order all the growing Produce to be paid to *B.* but may order ſome Annual Maintenance. *Kirby* v. *Clayton*, *H.* 1750. 2 *Vezey* 241.]

[If Money deviſed in Truſt, to be laid out in Lands in *England* for the Benefit of *A.* Remainders over, is by Act of Parliament ſecured on *A.*'s Eſtate in *Scotland* during his Minority; *A.* comes of Age, and becomes lunatic, it may be called in, and laid out purſuant to the Truſt. *Marquis Annandale* v. *Marchioneſs Annandale*, *T.* 1751. 2 *Vezey* 381.]

If

If Husband and Wife settle the Land of the Wife, to them for Life, and afterwards to their Issue, Remainder to the Husband in Fee, provided, that if the Wife survives, (they not having Issue) she may revoke; the Husband leaves Issue, the Wife survives, and the Issue dies without Issue in her Life-time; the Wife may revoke. *R.* 2 *Ver.* 651.

So a Thing for the publick Good shall be liberally expounded; as, if by Act of Parliament, the New-River Water is to be brought to the *North* Parts of the Town; if it be brought to the *South* or *South-west*, it shall be within the Benefit of the Act. *Per Ld. Somers*, 2 *Ver.* 432.

If Liberty be given to serve the City, they may serve the Parts adjacent. 1 *Ver.* 432.

If they may dig *in alieno solo* a Trench of 10 Feet wide, Pipes within the same Compass may be laid. *R.* 2 *Ver.* 431, 2.

[If *A.* by Will gives his Real Estate to his Son, *&c.* failing which to Trustees, for such charitable Uses as he shall direct; and as to his Personal, to the same Trustees, to pay Legacies, to allow Maintenance to his Son, and to pay it to him at Age or Marriage; or, if he dies, to be disposed of among the Widows and Orphans of Dissenters, and his poor Relations, as Trustees (whom he makes Executors) think fit; and by Codicil directs, that in Case of his Son's Death, the Lands shall be sold or not, as Trustees please; and the Purchase-money or Rents disposed of as he shall appoint, or, in Default, as Trustees please: He leaves no Direction, Son dies without Issue; there is no resulting Trust for the Heir at Law, nor beneficial Interest given to the Trustees, the Real Estate is subject to the same Trust as the Personal, whether sold or not; the Trustees are considered as Trustees throughout for both, and shall lay a Scheme before the Master for applying it to charitable Uses, pursuant to Testator's Intention, having particular Regard to his poor Relations, and their Circumstances. *Cook* v. *Duckenfield*, *P.* 1743. and *H.* 1743. 2 *Atkyns* 562, 567.

[If by Articles, previous to Marriage of *A.* and *B.* Money is to be laid out in Purchase of Lands, or renewable Leases, to be settled, *&c.* the last Limitation to *A.* and his Heirs, and till Purchase made, the Trustees to put out the Money and apply the Produce to the same Uses; and *A.* dies before any Purchase is made, and by his Will devises all his Freehold, Leasehold and Copyhold in *I.* and *E.* or elsewhere, to *B.* for Life, and then to *C.* and his Heirs, and gives his Personal to *B.* paying Debts and Legacies, and makes *B.* and *C.* Executors; the Money shall be laid out in Lands or Leaseholds. *Guidot* v. *Guidot*, *T.* 1745. 3 *Atkyns* 254.]

[If a Man conveys 1000 *l.* to Trustees, to lay it out in Lands within twenty-two Miles of *C.* and the first Tenant in Tail suggesting no such Purchase can be found, prays it may be laid out elsewhere; the Court will order the Trustee to look out for a Purchase within the Deed, and if in convenient Time it cannot be found, will deviate from the strict Terms of the Trust. *Maynwaring* v. *Maynwaring*, *H.* 1746. 3 *Atkyns* 413.]

[A Trust must take effect according to the whole Intent, or not at all; therefore, if Money is directed to be laid out in Land for a Charity, and is void as to that, it shall not be laid out in Land, and descend to the Heir. *Mogg* v. *Hodge*, *M.* 1750. 2 *Vezey* 52.]

[If *A.* possessed of a Term, conveys it to Trustees to permit *B.* his Wife to receive during the Term, if she so long live, then to permit *A.* if he so long live, then for the *Heirs of the Body* of *B.* by *A.* their Executors, *&c.* and for Default to *C.* if she so long live, and then to her two Sons; *A.* dies, having never had Issue; the whole Term is not in *B.* for *if she so long live* is the same as *for Life*; *the Heirs of the Body* are Words of Purchase, not of Limitation. *Hodgeson* v. *Bussey*, *M.* 1740. 2 *Atkyns* 89.]

(4 W. 14.) Trust for Payment of Debts. *Vide Ante*, (3 A. 6)—3 P. 1, &c.)

[If a Man devises his *Freehold* Estate to Trustees, *to be sold* for Payment of his Debts, and after other Legacies gives his Personal Estate to his Nephew; yet the Personal Estate shall be first applied to the Payment of his Debts, if there are no negative Words. *Fereyes* v. *Robertson*, *P.* 1731. *Bunb.* 301.]

[The Personal Estate shall be first liable to Debts and Legacies, and Testator cannot discharge it, as against Creditors; but as between Heir and Executor he

may give his Real Eſtate to Truſtees, or charge it in Equity, or direct it to be ſold for Payment, &c.; but in either Way there muſt be direct Words, or manifeſt Intention to diſcharge the Perſonal Eſtate, or it will be firſt liable. *Walker* v. *Jackſon*, *T.* 1743: *per Lord Hardwicke*. *Bunb.* 302.]

If a Truſt be for Payment of Debts, it ſhall be decreed againſt the Heir tho' there be no Covenant for Payment, and no Creditor be a Party, nor any Debt expreſſed particularly in the Deed. *Ca. Ch.* 249. *Vide Ante*, (3 A. 6.)

But not againſt a Purchaſer. *Ca. Ch.* 249.

So it ſhall be decreed, tho' the Conveyance be defective in Law. *R. Ca. Ch.* 249. *Vide Ante*, 2 T. 5.)

So, if *A.* marries, and it is agreed that the Portion ſhall be laid out in the Purchaſe of Lands to be ſettled upon *A.* and his Wife and the Heirs of their Bodies, Remainder to the right Heirs of *A.* and a Bond is given to *A.* for Payment of the Money, when a Purchaſe ſhall be provided; *A.* and his Wife die, and *A.* directs Payment to his Executor to diſcharge Debts and Legacies, he not having Iſſue; the Bond ſhall be decreed to the Executor, not to the Heir. *R.* 1 *Ch. R.* 31.

If Land be conveyed to *A.* for Payment of ſuch and ſuch Debts, and other Land be conveyed to him by the ſame Perſon for other Debts; the Heir ſhall not have an Account againſt *A.* for one Truſt only, but the Account ſhall be taken of both together. *R.* 1 *Ver.* 29.

If a Truſt be for Payment of Debts, which are claimed within a Year; a Creditor ſhall not be excluded after the Year, if there be not a Decree for it, upon a Bill againſt him, to compel him to come in for his Debt, or renounce the Benefit of the Truſt. *R.* 1 *Ver.* 260, 319.

If a Truſt be for Payment of Debts in a Schedule; a Purchaſer ought to apply his Money to the Payment. 1 *Ver.* 260, 319. *Vide Ante*, (4 I. 6.)

If Lands are ſettled, for Payment of the Party's Debts in a Schedule for the Term of 1000 Years, and afterwards to him and his Heirs; his Perſonal Eſtate ſhall go in Aid of the Real, for the Benefit of the Heir. *Ch. R.* 480. *Vide Ante*, (3 A. 3.)

If an Act of Parliament directs Payment of Mortgages in the firſt Place; they ſhall be paid before a prior Statute or Recognizance, tho' there be a General Saving. 2 *Ver.* 712.

If a Deviſe be for Payment of Debts, and Debts upon Bond are in Part ſatisfied out of the Perſonal Eſtate, the Reſidue ſhall be paid out of the Land deviſed. *Per Harcourt*, 1 *P. W.* 228. *Vide Ante*, (3 A. 3.) (*Vide* 2 *P. W.* 416.)

So Debts, which the Deviſor contracted for Neceſſaries during his Infancy. 1 *P. W.* 558.

Or Money, borrowed in his Infancy, to pay for meer Neceſſaries, not for Extravagances. 1 *P. W.* 559.

So Debts, which the Wife of the Deviſor had contracted to pay for Neceſſaries. 1 *P. W.* 483.

If Lands in Mortgage are deviſed to an Infant in Fee, ſubject to the Incumbrances thereupon, and other Lands are deviſed to *B.* for Payment of Debts; the latter ſhall be liable to the Payment of the Mortgage. 2 *P. W.* 386.

[If one indebted by Note, after the ſix Years elapſed, makes his Will, and charges his Lands with Payment of his Debts, ſuch Will revives the Debt. *Jones* v. *Stafford*, *M.* 1730. 3 *P. W.* 79.]

But a Truſt for Payment of Debts ſhall not be applied for any Debt not due at the Time, without an expreſs Proviſion. *R.* 1 *Ver.* 29.

Nor, for a Debt ariſing by the Party's Misfeaſance; as, an Eſcape, Breach of Truſt, &c. 1 *Ver.* 431, 2. *Eq. Abr.* 138.

Nor, for a Debt which was contracted *malâ fide*. 1 *Ver.* 432.

So, if by Marriage-Articles, a Man agrees to purchaſe 400*l. per Annum*, to be ſettled on the Huſband for Life, then on the Wife for Life, and afterwards to the Heirs of their Bodies, and if he dies before the Purchaſe, that the Wife ſhall have 3000*l.* or 400*l. per Ann.* at her Election; the Huſband dies before

the Purchaſe, having ſeveral Children, the Wife chooſes the 3000*l.* whereby there are no Aſſets for Creditors; ſhe ſhall be compelled to take the 400*l. per Ann.* *R.* 2 *Vern.* 605.

[If an Eſtate is deviſed in Truſt to raiſe by Rents, Mortgage, or Sale, enough to pay, *&c.* and ſubject thereto, to a Daughter in ſtrict Settlement, Remainder over; the Eſtate is not ſufficient, during the Life of a Jointreſs, to keep down the Intereſt, and Arrear accrues, afterwards it is more than ſufficient; the Surplus now ſhall be applied to pay the former Arrear, but the Daughter unprovided for ſhall firſt have a Maintenance. *Revel* v. *Watkinſon*, *T.* 1748. 1 *Vezey* 93.]

[Truſtees to pay Debts, may ſell or mortgage without a Decree. *E. Bath* v. *E. Bradford*, *T.* 1754. 2 *Vezey* 587.]

(4W. 15) A Truſt ſhall be decreed to him, who would take, if the Settlement were compleated.

If there be a Truſt, that Money be laid out in a Purchaſe of Land to be ſettled to ſuch and ſuch Uſes, every one ſhall have the ſame Benefit, if the Parties die without a Settlement, as he would have had, if Land had been ſettled. 2 *P. W.* 174.

As, if the Land was to be ſettled upon a Woman and the Heirs of her Body; if ſhe marries, and has Iſſue, and dies before any Settlement, her Huſband ſhall be allowed to have the Intereſt for his Life; for he would have been Tenant by the Curteſy, if the Settlement had been made. 2 *Ver.* 585.

So, if the Truſt of Land be for a Woman and the Heirs of her Body; her Huſband, if he has Iſſue, ſhall be Tenant by the Curteſy. 2 *Ver.* 585, 681.

But if the Settlement directed will make a Perpetuity, the Settlement ſhall not be decreed for ſuch Intent; but to all *in eſſe* it ſhall be only for Life, and upon a Limitation to ſuch as are not *in eſſe* it ſhall be in Tail. 2 *Ver.* 738.

(4 W. 16.) So Money for a Purchaſe may be decreed *in Specie*. *Vide Ante*, (4W. 10.)

[If a Man brings a Bill, to have Money in Specie deviſed to be laid out in Lands to be ſettled on him In-tail, Remainder to another in Fee; the Remainder-man, though of Age muſt be a Party, or he cannot have it. *Talbot* v. *Whitfield*, *M.* 1725. *Bunb.* 204.]

If 1000*l.* be deviſed for the Purchaſe of Land for *A. B.* and *C.* and their Heirs, equally to be divided; each may pray his Share in Money, if he be not an Infant. *Per Cowper*, 1 *P. W.* 389.

So, if there be a Deviſe, that the Land purchaſed ſhall be to Huſband and Wife for Life, afterwards to the Heirs of their Bodies, afterwards to the Heirs of the Huſband; the Son of their Bodies may make his Election to have the Money, and it ſhall be decreed, tho' there are Daughters, who might take as Heirs, if there was no Son, nor Iſſue. *Per Trevor*, 1 *P. W.* 130.

So, if it is to be ſettled to a Woman for Life, to her firſt and other Sons in Tail, Remainder to her Heirs; ſhe, and her only Son of full Age may pray a Decree for the Money, one Third to her, and two Thirds to the Son. *Per Parker*, 1 *P. W.* 470.

[If Money is left by Will to Truſtees, in Truſt for *A.* and her Heirs, to be laid out in the Purchaſe of Lands; the Money may be paid to her Huſband, *A.* conſenting in Court. *Pearſon* v. *Brereton*, *H.* 1743. 3 *Atkyns* 71. This is ſometimes refuſed; therefore Q.]

If 1000*l.* is agreed to be veſted in a Purchaſe, to the Uſe of *B.* in Tail, Remainder to him in Fee, it ſhall be decreed to him; for he may bar all the Limitations by a Fine, which may be levied in Vacation Time. 1 *P. W.* 471. 2 *P. W.* 173.

But if Money is to be laid out in a Purchaſe, for *A.* in Tail, Remainder to *B.* the Money ſhall not be decreed to *A.* for *A.* may die without Iſſue, before Recovery can be ſuffered. *Per Cowper, and afterwards per Parker*, 1 *P. W.* 470. *Cont. before*, 1 *P. W.* 91.

So, if the Limitation be to *A.* in Tail, and he is an Infant; for he cannot levy a Fine during his Minority. 1 *P. W.* 471, 91.

(4 W 17.) Truſt decreed notwithſtanding the Statute of Limitations

If Money be delivered upon Truſt, the Payment thereof ſhall be decreed, notwithſtanding the Statute of Limitations. *R. where the Statute was pleaded to a Bill for Relief.* 2 *Vent.* 345. *R. upon a Plea, Ca. Ch.* 20. 1 *Ch. R.* 125.

So,

So, where Money is received by one as Deputy to another. *R. Ca. Ch.* 20. 3 *Ch. R.* 8.

So, if *A.* files a *Latitat* againſt his Debtor and continues it during his Life, by which Means the Statute of Limitations does not incur, he may exhibit a Bill againſt the Debtor's Executor in Equity, and the Statute of Limitations ſhall be no Bar. 2 *Ver.* 695.

So, if an Eſtate be veſted in Truſtees for *A.* an Account ſhall be decreed for the Profits, and is not barred by the Statute. *Eq. Ca.* 33. *

* 2d Part of 2 *Mod. Ca.*

So, if a Bill in Equity be diſmiſſed becauſe the Plaintiff has a Remedy at Law, and the Statute of Limitations incurred *pendente lite*; *Chancery* will not ſuffer the Defendant at Law to plead the Statute of Limitations. 1 *Ver.* 73, 4.

But where a Demand is not made in Equity in a reaſonable Time, Equity does not relieve.

As, where a Deviſe was of Land for Payment of Debts, and afterwards to the Executors, but if any one of the Name of the Deviſor would purchaſe, he ſhould have the Eſtate for 200*l.* under the Value; a Bill, brought by one of his Name to have the Purchaſe twenty-five Years after his Death, was diſmiſſed. 1 *Ver.* 362, 3.

A Truſt for Sale of Lands ſhall be decreed, tho' the Time for Sale be elapſed. 1 *Ch. R.* 183.

(4 W. 18.) Tho' the Time to perform it be elapſed.

So, if a Deviſe be to *A.* upon Condition, that he lays out within five Years 7000*l.* in the Purchaſe of other Lands to be ſettled to the ſame Intent; if the Time for Performance be elapſed, pending Suits concerning the Will, the Time to perform may be enlarged. *Ch. R.* 55.

So, if after a Contract for Lands, an Order be made for Payment on ſuch a Day by Conſent, or the Articles to be cancelled; the Time for Payment may be enlarged by the Court. 2 *P. W.* 66.

A Truſt ſhall be executed againſt All, who claim by Privity of Eſtate, or with Notice, or without Conſideration. *Per Hale, Hard.* 469.

So, againſt a Tenant in Dower; for ſhe claims in the *Per. Hard.* 469.

So, if a Truſtee commits Treaſon, Felony, *&c.* or is outlawed, *&c. Ceſtuy que Truſt* ought to have a Remedy againſt the King, who claims by the Forfeiture, or Eſcheat. *Cont. Vide Uſes*, (F. H.)—*Semb. Acc. Hard.* 469.

But generally, he who claims in the *Poſt*, ſhall not be ſubject to the Truſt. *Hard.* 469. *Vide Uſes*, (F.)

(4 W. 19.) Truſt of a Term for Years.

(4 W. 19.) How it may be limited.

If a Term for Years be limited to Truſtees; the Truſt ſhall have the ſame Conſtruction in Equity, as the Term and Eſtate itſelf ſhall have at Common Law. *D. of Norfolk's Caſe*, 28. *R. Pol.* 31.

How the Truſt of a Chattel Perſonal may be limited, *Vide Ante*, (4 G. 2.)

And therefore, if it be limited in Truſt for *A.* for his Life, and afterwards to *B.* the Truſt for *B.* is good after the Death of *A. Cont.* for the whole Term veſts in *A. Dy.* 74. *Cro. El.* 796. *Mo.* 748, 635. But it has been ſeveral Times reſolved, That in a Deviſe, Grant, or Limitation of the Truſt of a Term, a Poſſibility may be after a Poſſibility; and therefore, in regard that *A.* may die before the Term expires, the latter Poſſibility may be aſſigned over to another. *R. Pl. Com.* 523, 539. *R. Mo.* 758, 847. *R.* 8 *Co.* 96. *b.* 10 *Co.* 47, 52. *b.* 1 *Bul.* 192. *R.* 2 *Cro.* 198. 1 *Rol.* 612. *l.* 30. 610. *l.* 30. *Dy.* 277, 328, 358.

When the Truſt of a Term for a Wife goes to the Huſband, *Vide Ante*, (2 M. 9.)

So, if a Term be deviſed or limited in Truſt to *A.* for Life, and afterwards to *B.* for Life, and afterwards to twenty others for Life ſucceſſively; it is good, if all the Lives are *in eſſe*. *Agreed Ca. Ch.* 8. *Duke of Norfolk's Caſe*, 29. *R.* 1 *Sid.* 451. 1 *Vent.* 79.

So, if a Term be deviſed or limited in Truſt to *A.* for Life, and afterwards to his Wife for Life, and afterwards to their Children for Life, and afterwards to *B.* for Life; the Limitation to *B.* is good. *R. Ca. Ch.* 239. *Qu.* If the Children were not *in eſſe*?

So,

So, if it be to *A.* for 18 Years, and then to *B.* for Life, and afterwards to his Wife for Life, and then to the Eldeſt Iſſue Male of *B.* for Life; tho' he had no Iſſue Male at the Time of the Deviſe, or Death of the Deviſor, yet the Limitation to the Iſſue Male is good. *R. per 3 Ja. 1 Rol.* 612. *l.* 30. 937. *l.* 45. *Agr. D. of Norfolk's Caſe*, 29. for it is limited upon a Contingency, which expires within the Compaſs of a Life.

So a Limitation to *A.* and his Wife for Life, and afterwards to their Eldeſt Son not then born, is good to the Son, tho' not *in eſſe*. *Per Lord Keeper Finch*, 1 *Mod.* 115.

So a Limitation to *A.* for Life, and afterwards to his Wife for Life, and afterwards to *B.* if he ſurvives *A.* and his Wife, if not, to the Son of *B.* then living, and if he ſhall have no Iſſue, to *D.* ſhall be a good Limitation to *D.* if *B.* dies without Iſſue before *A.* or his Wife. *R. Ca. Ch.* 132.

So, to *A.* for 1000 Years, upon Truſt that *B.* and his Iſſue ſhall enjoy, and if *B.* dies without Iſſue extant, or *enſeint*, *C.* ſhall have it; if *B.* dies without Iſſue, *C.* ſhall take. *R. per King*, 5 *Geo.* 2. 26.

So a Deviſe or Limitation in Truſt to *A.* and the Iſſue of his Body, and if he dies without Iſſue and unmarried, to *B.* is good to *B.* for the Contingency expires within the Life of *A.* *F.* 2 *Cro.* 462.

Or, to *A.* for Life, and afterwards to *B.* and his Iſſue, and if he dies without Iſſue in the Life of *A.* then to *C.* The Limitation to *C.* is good, *B.* being dead without Iſſue in the Life of *A.* *R. in Chancery per Bridgman, with Twiſden and Rainsford. D. of Norfolk's Caſe*, 35, 6. *Ca. Ch.* 131. 1 *Ver.* 304.

So a Deviſe or Limitation in Truſt to *A.* and his Heirs, ſo long as *B.* has Iſſue of his Body, and if he dies without Iſſue in the Life of *A.* then to *Edward*, is good to *Edward*; for the Contingency expires in the Life of *A. R.* 34 *Car.* 2. *per Lord Nottingham, contrary to the Opinion of the two Chief Juſtices, and the Chief Baron. Rev. per Lord Keeper North, but affirmed in Parliament*, 1 *Jac.* 2. *Duke of Norfolk's Caſe.*—1 *Ver.* 163.

So a Deviſe in Truſt for Huſband and Wife for Life, and afterwards to be aſſigned to the firſt Son, at his Age of 21 Years, and if he dies before 21, to the ſecond, and ſo to the third Son, *&c.* upon the ſame Contingency ſhall be good, tho' it be a Contingency after a Contingency; for the Whole determines within 21 Years. *R.* 1 *Ver.* 235, 304. *Fig.* 316.

So a Deviſe, *&c.* of a Term to *A.* for Life, and afterwards to his firſt Son, and the Heirs of his Body, and ſo to every other Son and the Heirs of his Body, and then to the firſt Daughter and the Heirs of her Body; if *A.* has no Son, but a Daughter, ſhe ſhall take; for ſhe is the firſt Perſon, in whom the Limitation takes Effect. *R.* 1 *Sal.* 156. 2 *Ver.* 600.

So, to *A.* and the Heirs of his Body, and if he dies without Iſſue, in the Life of *B.* to *B.* ſhall be good to *B.* *R.* 1 *Sal.* 225. *Skin.* 340. *Eq. Abr.* 192.

[Where the Words of the Deviſe of a Truſt of a Term of Years would make an expreſs Eſtate-tail in a Freehold, the Deviſe over of ſuch Term is void; but it is good if the Words would only have made an Eſtate-tail by Implication. As a Deviſe to *A.* for Life, Remainder to the Heirs of his Body, Remainder to B.; the Remainder to *B.* is void: but Deviſe to *A.* then to his Children, and if they leave no Iſſue at the Time of their Deaths, then to *B.*; this Remainder to *B.* is good. *Atkinſon* v. *Hutchinſon*, *P.* 1734. 3 *P. W.* 258.]

So, if a Father ſettles a Term upon his Son, to be veſted in Truſtees for the Benefit of him and his Iſſue, and if he has no Iſſue, for *A. B.* and *C.* his Siſters, and the Son veſts it in Truſt for himſelf and his Iſſue, and for Default of Iſſue, for *A. B.* and *C.* If the Son dies without Iſſue, it ſhall be decreed to *A. B.* and *C.* and not to his Executor. *R.* 1 *Ch. R.* 17.

[If *A.* having a Freehold Leaſe for three Lives to her, her Executors, *&c.* for valuable Conſideration aſſigns it to Truſtees, to the Uſe of her Son *B.* for Life, then to the Uſe of his Iſſue, and for Want of ſuch Iſſue to the Uſe of *C.* her Executors, *&c.* during the Reſidue; the Whole veſts in the Iſſue, (*i. e.* the Children of *B.*); and *A.*'s Executor, who is ſpecial Occupant, cannot claim againſt it. *Williams* v. *Jekyll*, *M.* 1755. 2 *Vezey* 681.]

So, if a Father makes an Agreement that an Annuity ſhall be paid to his Daughter for her ſeparate Maintenance, that if the Huſband ſurvives he ſhall have it for his Life, if they have Iſſue, that the Iſſue ſhall have what remains of the Term, if they have no Iſſue, the Father ſhall have it; if the Husband and Wife have Iſſue, who die in four Years after the Husband and Wife, the Father ſhall have it, and not the Adminiſtrator of the Iſſue. *Semb. per Cowper. But Q.* 2 *Ver.* 693.

So, if a Term be deviſed to a Son till the Age of 21 Years, and then to him for Life, and then to ſuch Child to whom he ſhall give it, and if he dies without Iſſue, to *B.* The Limitation to *B.* ſhall be good; for it ſhall be conſtrued, if he has no Iſſue at his Death. *F.g.* 317. *Eq. Abr.* 193.

So, to *A.* and his Children, and if he dies before the Term expired, not having Iſſue then living, to *B.* *R. Eq. Abr.* 193.

But a Term for Years cannot be intailed with a Remainder over: And therefore, if a Term be deviſed, or limited in Truſt to *A.* and the Heirs of his Body, and for Default of ſuch Iſſue to *B.* the Limitation to *B.* is void; for it has a Tendency to a Perpetuity. *Dy. 7. a. Cont. Mo.* 220. *R. Acc. Mo.* 810. *R.* 1 *Rol.* 610. *l.* 40. 611. *l.* 30. *R. Cro. Car.* 230. 2 *Rol.* 129. *R.* 1 *Sid.* 37, 450. *Agr. D. of Norfolk's Caſe*, 28. *R.* 4 *Inſt.* 87. (4 W. 20.) How it cannot.

[If *A.* deviſes his Term of 1000 Years to Truſtees, in Truſt for his Son *T.* for ſo many Years of the Term as he ſhall live; and after his Death, for his Iſſue-male for ſo many Years, *&c.*; and when extinct, then for his ſecond Son *W.* and his Iſſue in like Manner; and then that the Premiſſes ſhould come, deſcend and continue, in the Iſſue-male of the Name and Family of the *A.*'s, which ſhould be next of Kin, for the Reſidue of the Term, and makes his Son *T.* Executor and reſiduary Legatee; the Reſidue of the Term ſhall go to the Executor of *T.* contrary to the Will, becauſe there is a plain Affectation of a Perpetuity. *Clare* v. *Clare*, *P.* 7. *G.* 2. *C. T. T.* 21.]

So a Limitation, after a Death without Iſſue, in all Caſes is void; for a Poſſibility ſo remote ſhall not be expected; as, if a Term be limited to *A.* for Life, and afterwards to *B.* for Life, and afterwards to their Children, (not *in eſſe*) for their Lives, and if *A.* and *B.* die without Iſſue during the Term, Remainder of the Term to *C.* the Limitation to *C.* is void. *R. Pol.* 30, 43.

So, a Deviſe to a Son, and if he dies, married, or not married, without Iſſue, to *B.* The Limitation to *B.* is void. *R. D. of Norfolk's Caſe.*

So, if a Deviſe, or Limitation be in Truſt to *B.* and his Iſſue, and if the Iſſue die without Iſſue, to *C.* Tho' the Iſſue takes nothing, yet the Limitation to *C.* being after a Death without Iſſue, is void. *R. D. of Norfolk's Caſe*, 28. *Pol.* 30.

Or, to *B.* for Life, and then to his firſt Son in Tail, and ſo to the ſecond, third, and other Sons in Tail ſucceſſively, and for Default of Iſſue to *C.* Tho' *B.* never has a Son, and ſo the Contingency never happens, yet the Limitation to *C.* is void *R.* 1 *Mod.* 115. *Ca. Ch.* 229. 1 *Ch. R.* 175, 200, 1. *D. of Norfolk's Caſe*, 29. *R. Pol.* 34, 41. *Semb. Cont.* 1 *Sal.* 156.

So a Deviſe, or Limitation to *A.* and his Aſſigns, and if he dies without Iſſue then living, to *B.* Tho' the Limitation to *B.* depends in a Manner upon the Death of *A.* yet it is not good; for the Law never expects a Death without Iſſue. *R. per tot. Cur. and aff. in Error per* 7 *J. Tanfeild Cont.* 2 *Cro.* 460. *Jon.* 15. 1 *Rol.* 613. *l.* 5.—But this Caſe was doubted. *D. of Norfolk's Caſe*, 35.

So a Deviſe to *A.* and if he marries, and has no Iſſue living to enjoy, then to *B.* is not good to *B.* *R.* 3 *Lev.* 23.

So a Limitation to any one after the Death of a Life not *in eſſe*, is void. *Ca. Ch.* 8. *R. Pol.* 32. *R. Cont. Pol.* 39.

And therefore, a Limitation to *A.* for Life, and afterwards to ſuch Perſon as *A.* ſhall nominate, and for want of Nomination, or after the Death of the Nominee to his Heir, is void to the Heir. *Ca. Ch.* 8.

So a Limitation to one not *in eſſe*, after two Limitations *in eſſe*, is void. *Semb. Ca. Ch.* 33.

But in such Case, a Limitation to Husband and Wife and the Survivor of them, shall be intended to be but one Limitation. *Ca. Ch.* 33.

So, if a Limitation of a Term be to *A.* after a Life *in esse*, and also after a Remainder to another not *in esse*; if there be no such Person *in esse* at the Time of the Death of the Tenant for Life, the Limitation to *A.* shall be good. *Dub.* 1 *Ver.* 462.

Yet a Limitation of a Term, which attends an Inheritance, may be intailed. *R.* 24 *Car.* 2. 1 *Vent.* 194. *Vide Ante*, (4 G. 5.)

Tho' the Intail of the Inheritance and of the Term be by different Clauses, or Deeds executed at different Times. *R.* 1 *Vent.* 195.

(4 W. 21.) What Estate or Interest the Grantee of a Term takes.

If a Term for Years be limited to *A.* and the Heirs of his Body, he has the whole Term in himself, and may dispose thereof. 10 *Co.* 87. *b.*

So, if a Term be limited to *A.* for Life, and afterwards to the Heirs of the Body of *A.* the whole Term vests in *A.* *R. Mo.* 809. So long as he has Heirs of his Body. *Pol.* 24.

But if *A.* dies without Issue, the Term reverts to the Executor of the Devisor. *Semb. Mo.* 809. *Pol.* 24. *R. Cont.* 10 *Co.* 87. *D. Acc.* 1 *Sid.* 37. *Cont. per Ld. Nottingham*, 1 *Mod.* 115. *Ca. Ch.* 230. *and in the D. of Norfolk's Case* 34. *and the Opinion of Coke denied by him. R. Cont.* 1 *Rol.* 611. *l.* 30. *R. Cont.* 1 *Sid.* 451. *but Twisden Acc. And it was R. Acc. in C. B. Hil.* 9 *W.* 3. *Inter Eyre and Falkner, Rot.* 1384. *And Treby Ch. J. produced a Report of the Case*, 1 *Sid.* 451. *to the Contrary.* But the Case of *Eyre and Falkner* was, A Devise to *A.* for Life, afterwards to *B.* and others for Life successively, if the Term so long continued; and not to the Heirs of the Body. 1 *Sal.* 231.

Tho' *A.* has disposed of the Term; for he can dispose of it only so long as he has Issue. *Semb. Mo.* 809. *Pol.* 24.

And if *A.* dies leaving Issue of his Body, the Term goes to his Executor, not to the Issue. *R.* 1 *Rol.* 611. *l.* 35. *R. Pol.* 25. *R.* 10 *Co.* 87. *b. Per Lord Nottingham, D. of Norfolk's Case* 34. *Per Ch. J.* 1 *Sid.* 37, 451.

So, if a Term be devised to *A.* for Life, and afterwards to his first, second, and other Sons, (not *in esse*,) Remainder to his (the Devisor's) own right Heirs, the Remainder to his Heirs is void; for the Term reverts to the Devisor, and goes to his Executor, or Administrator. *Semb. Pol.* 32.

If it is to *A.* and his Wife and their Children not *in esse*, it shall not be an Intail; nor shall the Children take jointly with their Parents. *R.* 1 *Ch. R.* 111.

If a Term be limited to *A.* for Life, and afterwards to *B.* for Life, the Residue of the Term not disposed of goes to the Grantor, or the Executors of the Devisor. *Qu. per Me.—Vide Pol.* 44. *R.* that it goes to the Executors of the Devisor, in *C. B. H.* 8 *W.* 3. *rot.* 1384. *inter Eyre and Falkner*, 1 *Sal.* 231.

If *A.* upon his Marriage vests a Term, of which he was possessed, in Trust for him and his Wife and their Heirs Male, and if he has none, for Daughters, and then assigns the Term to be sold for Payment of Debts; the Term shall be sold, notwithstanding the Trust. *R.* 1 *Ch. R.* 12.

If a Term be limited to *A.* for Life, and afterwards to his first, second, and other Sons not *in esse* for Life, or in Tail, which Limitations are void; the Term after the Death of *A.* without Issue goes to the Executor of the Grantor. *Dub.* Whether it goes to the Executor of *A.* or the Executor of the Grantor, for *A.* was also Executor to the Grantor. *Pol.* 28.—Where the Limitation was to *A.* and his Assigns, and the Limitations over were void, *R.* that it goes to the Executor of *A.* *Pol.* 36.

So, if a Term be limited by *A.* in Trust for himself for Life, and afterwards to his Wife for Life, and afterwards to such Person as *A.* shall nominate, and for want of Nomination, or upon the Death of the Nominee, to his Heir; the Limitation to the Heir is void, and the Residue of the Term goes to *A.* the Grantor. *R. Ca. Ch.* 8. *Pol.* 32.

But if *A.* makes a Nomination, it goes to the Nominee, his Executors, or Administrators, tho' they are not named. *R. Ca. Ch.* 9.

If

If a Term be limited to *A.* and afterwards to his Wife, and afterwards to their Iſſue; it is of the ſame Effect, as if it was limited to them and the Heirs of their Bodies, if the Iſſue be not *in eſſe*. *Ca. Ch.* 266. (2 *Ca. Ch.* 115.)

But if a Term be limited to *A.* for Life, and afterwards to his Wife for Life, and afterwards to the Heirs Male of the Body of *A.* this goes to the Heir Male; for a Term cannot be intailed, and therefore the Words *Heirs Male of the Body of* A. are *Deſignatio Perſonæ*. *Semb. Cont. Mo.* 809. *Pol.* 24. *R. Cont. inter Peacock and Spooner in Chancery, Paſch.* 1688. *But that Decree was reverſed per Commiſſioners of the Great Seal, and the Reverſal affirmed in Parliament*, 2 *Ver.* 43, 195, 362. *Qu.* If the Heir Male was not *in eſſe* at the Time of the Limitation? *Vide* 5 *Geo.* 2. 30, 31. *this Caſe cited.* *

* *Vide* 2 *Ver.* 668.

If a Term be limited to *A.* for Life, and afterwards to his Son and the Heirs of his Body; *A.* has the whole Term in him, and the Son only a Poſſibility. *R.* 3 *Lev.* 265. 1 *Sal.* 231.

And therefore, he ſhall plead that he is poſſeſſed of the whole Term. *R.* 3 *Lev.* 265.

And he ſhall pay the Rent, anſwer for Waſte, *&c.* *R.* 10 *Co.* 47. *a.*

And ſhall maintain Covenant as an Aſſignee. *R.* 2 *Vent.* 128. 3 *Lev.* 264.

And if a Deviſee, *&c.* in Remainder dies in the Life-time of the firſt Deviſee, his Eſtate is gone, for it was only a Poſſibility. *D.* 1 *Sid.* 188. *Semb. Ca. Ch.* 132.

Yet his Executor, or Adminiſtrator, ſhall have it after the Death of the firſt Deviſee, if it was not deviſed over after the Death of that Remainder-Man. *R.* 10 *Co.* 51. *b.* *R.* 2 *Gro.* 510. *R. per King*, 5 *Geo.* 2. 26.

But the firſt Deviſee cannot deſtroy ſuch a Poſſibility; tho' he ſuffers a Common Recovery of his Eſtate. *R.* 8 *Co.* 96. *a.* *R.* 10 *Co.* 47. *b.*

Or makes a Feoffment after he in Remainder comes *in eſſe*. *Per* 3 *J.* 1 *Rol.* 937. *l.* 45. *R. Pol.* 26.

Tho' the Feoffment be with Warranty. *R. Pol.* 26.

So, if he purchaſes the Reverſion, by which his Intereſt is merged. *R.* 10 *Co.* 52. *a. b.*

So a Deviſee in Remainder cannot grant his Poſſibility. *R.* 4 *Co.* 66. *R.* 10 *Co*, 47. *b.* *D.* 1 *Sid.* 188. *R.* 10 *Co.* 52. *b.*

But he may releaſe it to the firſt Deviſee being in Poſſeſſion. *R.* 10 *Co.* 47. *b.*

And the Truſt of a Term limited to one in Remainder may be aſſigned in Equity. *Ca. Ch.* 8. *R. Pol.* 32. *Vide Ante*, (2 H.) *R. Cont.* 3 *Lev.* 427. Where a Deviſe was by one, who had only a Poſſibility, if the next in Remainder died without Iſſue. *R. Cont.* 2 *Ver.* 563.

(4 W. 22.)

Truſt to attend the Inheritance.

If a Man purchaſes the Inheritance in the Name of Truſtees, and has a Term for Years aſſigned to himſelf, it ſhall be in Truſt to attend the Inheritance; tho' it is not ſaid ſo in the Aſſignment. *R.* 1 *Ver.* 1. 2 *Ca. Ch.* 49, 55. 1 *Ver.* 188, 9. *Eq. Abr.* 241. *Vide Ante*, (4 G. 5.)

So, if he had a Term for Years in himſelf, and afterwards purchaſes the Inheritance in the Name of Truſtees. *R.* 1 *Ver.* 104.

So, if he limits a Term upon a Truſt to be declared by his Will in Writing, and if he makes no Diſpoſition, to attend the Inheritance; he by a Nuncupative Will gives the Whole to *A.* and dies without an Heir; the Term ſhall attend the Eſcheat. *R.* 1 *Ver.* 340, 357.

If Lands be of the Nature of *Gavelkind*, the Term ſhall be diſtributed for the Benefit of each Heir. 1 *Ver.* 357.

If a Term, aſſigned to two Sons on the Purchaſe of the Father, was a Mortgage, and one Son dies, the Survivor ſhall not have the Benefit, upon Payment of the Money due upon the Mortgage. *R.* 1 *Ch. R.* 119.

If a Term be aſſigned in Truſt to attend the Inheritance, it ſhall not be made uſe of to defeat a Tenant by the Curteſy. *R.* 2 *Ver.* 324.

If there be a Term to attend the Inheritance, a Deviſe of the Inheritance, defective for Want of three Witneſſes, does not paſs the Term. *R. Eq. R.* 170.

[A Term attendant on the Inheritance is Part of it, and cannot be diſannexed by the Court, nor paſs by a Will which would not paſs the Inheritance. *Villers* v. *Villers*, *M.* 1740. 2 *Atkyns* 71.]

(4 W. 23.) To preſerve contingent Uſes.

Truſtees to preſerve contingent Uſes, where the Eſtate was mortgaged and ſubject to a Judgment, and afterwards ſettled, upon Marriage to the Uſe of the Mortgagor for Life, and afterwards to his Wife for Life, then to Truſtees, and to the firſt and other Sons in Tail, ſhall be decreed to join with the Mortgagor in a Sale, where the Wife aſſents and no Son is born, and the Mortgage cannot be otherwiſe paid. *R.* 2 *Ver.* 303.

So, if a Term be veſted in *A.* to the Uſes of his Will, and a Deviſe is to *B.* in Tail, Remainder to *A.* in Fee, and *B.* ſuffers a Recovery and grants to *C.* It ſhall be decreed that *A.* ſhall aſſign the Term for the Benefit of *C.* *R.* 2 *Mod.* 9.

But a Truſtee to preſerve contingent Uſes ſhall not be decreed to join in a Sale for Payment of Debts, tho' there has been no Iſſue for twelve Years, nor any Probability of Iſſue afterwards. *Dub.* 1 *Ver.* 181.

[If *A.* deviſes his Lands, after the Death of his Wife, and a Term of 1000 Years, to his Son *B.* for 99 Years, without Waſte; Remainder to Truſtees in Fee to preſerve contingent Remainders; Remainder to firſt and other Sons of *B.*; Remainder to his ſecond Son *C.* for 99 Years; Remainder to Truſtees to preſerve, *&c.*; Remainder to the firſt and other Sons; Remainder to his own younger Sons; in like Manner, Remainder to his Daughters; Remainder to his Heirs; and *A.* dies, and *B.* dies without Iſſue, and *C.* marries, and has a Son who is of Age, and they two become indebted by Bond, and make Aſſignments of the ſettled Eſtate in Truſt for Creditors, and agree to ſuffer Recovery, to make this Proviſion for Creditors effectual, the Court will not decree the Truſtees to join in the Recovery; though, had they done it voluntarily, it might poſſibly not have been a Breach of Truſt. *Woodhouſe* v. *Hoſkins*, *H.* 1743. 3 *Atkyns* 22.]

So a Breach of Truſt ſhall never be decreed; as, if a Marriage-Settlement be to *A.* for Life, and afterwards to the Wife for a Jointure, then to Truſtees to preſerve contingent Uſes, then to the firſt and other Sons, *&c.* the Truſtees ſhall not be decreed to join in a Sale, tho' the Portion was not paid, and tho' it be for Payment of Debts. *R.* 2 *Ca. Ch.* 144.

So, if a Father be circumvented to do an Act, by which the contingent Eſtates are deſtroyed, the Perſon defeated ſhall be relieved in Equity. 1 *Ver.* 444, 447.

So, if Truſtees to preſerve contingent Remainders join in a Feoffment, or Releaſe to the Tenant for Life, whereby the Remainders are merged; it will be a Breach of their Truſt, and the Feoffment ſhall be to the former Uſes; and then the Truſtees ſhall purchaſe another Eſtate to the ſame Uſes, where the Feoffee is a Purchaſer for a valuable Conſideration, without Notice. *R.* 2 *P. W.* 612.

(4 W. 24.) To raiſe Portions.

If a Term be in Truſt to raiſe Portions for Children, and be afterwards merged by the Deſcent of the Inheritance, Equity will revive the Term for the Benefit of the Children. 2 *Ver.* 91, 208. *Vide Ante*, (3 Z. 4.)

So, if *A.* creates a Term for Portions for his Daughters, and afterwards limits the Eſtate to his own right Heirs, and dies having only one Daughter his Heir; the Term ſhall not be merged in Equity, unleſs it be for the Benefit of the Heir. 2 *Ver.* 352.

But where, by Articles upon Marriage, 1200*l.* was agreed to be veſted in Land to be ſettled upon the Huſband for Life, To his Wife for Life, To the firſt and other Sons in Tail, then for a Term to Truſtees for Portions for the Daughters, and afterwards to the right Heirs of the Huſband, who dies before the Settlement made, having only a Daughter; the Land ſhall be decreed to the Daughter and her Heirs, ſubject to the Jointure, without the Term for Portions, which was of no Uſe to the Daughter and Heir. 2 *Ver.* 351.

(4 W. 25.) Breach of Truſt; How puniſhed.

[A Court of Equity can lay hold of every Breach of Truſt, whether the Perſon guilty is in a private or a public Capacity. *Charitable Corporation* v. *Sutton*, *T.* 1742. 2 *Atkyns* 400.]

[Truſtees to preſerve contingent Remainders may be guilty of Breach of Truſt, and are puniſhable for it. *Garth* v. *Cotton*, *H.* 1753. 3 *Atkyns* 751. *T.* 1750. 1 *Vezey* 524, 546.]

[A Breach of Truſt is conſidered as a Simple-contract Debt, and falls on Truſtee's Perſonal Eſtate only.] *Vernon* v. *Vawdry*, *H.* 1740. 2 *Atkyns* 119]

[*A.* and *B.* Truſtees under a Deed, and neither to anſwer for the other; *A.* receives Money, and by Writing under Hand and Seal acknowledges it, and that *B.* received no Part, he never puts it out, and dies. This Writing is a a Specialty, good againſt the Executor, but not againſt the Heir; but the *Ceſtuique Truſt*, in caſe of Deficiency, ſhall ſtand in the Place of the Creditors ſatisfied out of the Perſonal Eſtate. *Gifford* v. *Manley*, *T.* 9 *G.* 2. *C. T. T.* 109.]

If a Man acts contrary to his Truſt, he ſhall be decreed to make Satisfaction; as, if there are Articles between *A.* and *B.* to make a Jointure on the Wife of *A.* and, by Importunity, *B.* releaſes his Covenant, and delivers up the Articles to *A.* he ſhall make a Recompence to the Wife and the Children of the Marriage, for his Breach of Truſt. *Semb. Ca. Ch.* 125.

If a Truſtee in a Recognizance releaſes the Recognizance, he ſhall pay the Principal and Intereſt, if it does not exceed the Penalty. *R.* 1 *Ver.* 342.

If a Judgment be to *A.* for the Security of Articles for making a Jointure, and *A.* by Corruption acknowledges Satisfaction, whereby the Jointure is defeated; *A.* ſhall make good to the Wife all her Damage. *R.* 2 *Ver.* 620.

Yet if *A.* had a Colour to do it, and did not act by Corruption, he ſhall only pay Coſts. 2 *Ver.* 619.

So, if a Truſtee ſells the Land, and, after a Fine and Nonclaim for five Years, repurchaſes it for a valuable Conſideration, Equity will decree the Land to the *Ceſtuy que Truſt*. 1 *Ver.* 60, 61, 84, 145. 2 *Ca. Ch.* 126.

So, if a Truſtee ſells to *A.* who has Notice of the Truſt, who levies a Fine, and five Years paſs; the *Ceſtuy que Truſt* ſhall not be barred; for *A.* having Notice ſhall be a Truſtee for him. *Eq. Abr.* 256. 1 *Ver.* 149.

[If Truſtees, to preſerve contingent Remainders for Children unborn, join to defeat them, (though under Pretence of raiſing Money to pay Teſtator's Debts, and though the Child, who would have been Tenant In-tail, is afterwards made Tenant for Life,) it is a Breach of Truſt relievable in Equity; if there is a Purchaſer without Notice for a valuable Conſideration, the Truſtees ſhall anſwer it; if not, the Eſtates ſhall be re-conveyed to the former Uſes. *Manſel* v. *Manſel*, *T.* 6 *G.* 2. *C. T. T.* 252.]

[If Truſtees are appointed to receive Rents, and apply them for the Maintenance of *A.* and *B.* till Twenty-five, and to raiſe 5000 *l.* for *A.*'s Portion, and for other Purpoſes, and then the Eſtate is deviſed to *B.* and the Truſtees let *B.* into Poſſeſſion before Twenty-five, they ſhall be anſwerable for what is received by *B.* *Okeden* v. *Okeden*, *M.* 1738. 1 *Atkyns* 550.]

[If after Marriage, a Huſband conveys his Wife's Fortune to a Truſtee for her ſeparate Uſe, and the Truſtee is guilty of a Breach of Truſt, (by delivering up the Fortune to the Huſband) the Court will decree him to make Satisfaction to the *Ceſtuy que Truſt*. *Smith* v. *French*, *H.* 1741. 2 *Atkyns* 243.]

[But if it appears, that the Wife had joined earneſtly in the Requeſt to the Truſtee, (her Mother) promiſed to releaſe, lived with, and was maintained by her till the Husband's Death, and for Years after, till her ſecond Marriage, offered to releaſe while ſole, and that on the Treaty for the ſecond Marriage neither ſhe nor her Husband mentioned it, the Court will not decree Satisfaction. *Ibid.*]

(4 W. 26.) Tho' the Breach be purged as to a Stranger.

So, tho' the Breach of Truſt was purged, he who was guilty of the Breach, ſhall not take Advantage of it; as, if *A.* ſells for a valuable Conſideration, in Breach of his Truſt, and the Purchaſer levies a Fine, and five Years paſs without Claim, and afterwards *A.* purchaſes the ſame Land, he ſhall not avoid the Truſt by the Fine and Non-claim. *R.* 2 *Ca. Ch.* 126. *Eq. Abr.* 256.

(4 W. 27.) Tho' the Truſt Eſtate lies out of the Juriſdiction of the Court. *Vide Juriſdiction, Ante,* (3 X.)

So a Breach of Truſt ſhall be remedied, tho' the Land be out of the Juriſdiction of the Court; as, if the Land lies in *Ireland*, but the Truſtee lives within the Juriſdiction of the Court, *Chancery* will proceed againſt his Perſon, tho' it does not touch the Profits of the Land. 2 *Ca. Ch.* 189. 1 *Ver.* 76, 135. *R.* 1 *Ver.* 405, 419.

If one Joint-tenant of Land in *Ireland*, takes the whole Profits, and comes into *England*, he ſhall account for the Profits here. *R.* 2 *Ca. Ch.* 214.

So, if an Agreement be that Portions ſhall be paid, and that a Receiver in the Iſle of *Man* ſhall pay them out of the Rents there; tho' a Decree does not bind Lands there, yet it ſhall be againſt the Perſon. *R. Ca. Ch.* 221.

If a Matter ariſes within a County Palatine, and the Perſon lives here, *Chancery* will compel him to do what he ought.

So, if a Mortgage be of the Iſland of *Sarke*, or Land in *Jerſey*, *Guernſey*, *&c. Chancery* will compel the Mortgagor, being here, to redeem or be foreclоſed. *R.* 1 *Sal.* 404. 2 *Ver.* 494.

So, if a Man obtains a Settlement of Land in *Ireland* by Practice. *R. upon Plea*, 1 *Ver.* 76, 239, 405, 419.

[If Truſtee purchaſes Land in *Ireland* with Truſt-money, the Court cannot charge it therewith; but if the Specialty Creditors exhauſt the Perſonal, the Simple-contract Creditors ſhall ſtand in their Place. *Cox* v. *Bateman*, *T.* 1730. 2 *Vezey* 19.]

(4 W. 28.) *Particeps Criminis.* Who ſhall be.

So every one, who is *Particeps Criminis*, ſhall be affected by the Breach of a Truſt;

As, if a Man purchaſe with Notice of the Truſt. *Vide Ante*, (2 C. 2.—4 C. 1.—4 I. 3.)

Tho' he pays a valuable Conſideration. 1 *Ver.* 60, 149. *Eq. Abr.* 256.

Tho' after the Purchaſe he levies a Fine, and five Years paſs; for being a Truſtee, the Fine is fraudulent. 1 *Ver.* 149.

Tho' the Truſt be for Creditors, who ſhould claim within a Year, and after the Year an Aſſignment is made to *B.* who does not know that the Debts were not paid; for he had Notice of the Truſt. 1 *Ver.* 319.

If *A.* by Fraud obtains Adminiſtration to *B.* and ſells the Stock of *B.* to *D.* who knows of the Fraud, *D.* ſhall be decreed to refund. *R. Ch. R.* 298, 430.

So, if a Truſtee ſells to *A.* not having Notice of the Truſt, who levies a Fine, and five Years paſs, and then conveys to the Truſtee; the Truſtee ſhall take upon the prior Truſt, notwithſtanding the Fine. *Eq. Abr.* 256.

So, if a Man encourages a Purchaſer, where he himſelf has a Title; as, if the Heir at Law encourages *A.* to purchaſe an Annuity of his younger Brother under the Will of his Father, when the Eſtate was intailed upon the Heir, by a Settlement prior to the Will. *R.* that he ſhall be decreed to confirm the Purchaſe, 1 *Ver.* 136. *Eq. Ca.* 96. *

* 2d Part of 2 *Mod. Ca.*

If Copyhold, or other Land belongs to a Younger Son, and the Elder Brother ſells it, of whom the Younger Brother, knowing of ſuch Sale, accepts an Annuity of equal annual Value, and ſuffers the Purchaſer to enjoy during his Brother's Life, but afterwards ſeeks to avoid the Purchaſe, he ſhall be obliged to confirm it. 1 *Ver.* 325.

If *A.* takes a Mortgage from *B.* but beforehand inquires of *C.* whether he had any Money due to him from *B.* and he denies that he had, tho' he had a prior Mortgage; *A.* ſhall be preferred to *C.* *R.* 2 *Ver.* 554.

If *A.* upon the Marriage of her Son agrees to releaſe her Dower, ſhe ſhall be decreed to do it, tho' it was upon a falſe Suggeſtion. *R.* 2 *Ver.* 133.

If *A.* having a Term, be a Witneſs to a Settlement made by her Son on his Marriage, whereby that Term is ſettled, ſhe ſhall be decreed to make good the Settlement. *R.* 2 *Ver.* 150.

So, if a prior Mortgagee be a Witneſs to a ſecond Mortgage, and does not diſcover his Mortgage, he ſhall be poſtponed. 2 *Ver.* 151. *Eq. Ca.* 38. * * 2d Part of 2 *Mod. Ca.*

If *A.* having a Deed by which an Eſtate is intailed on him after the Death of *B.* be privy to the Marriage of *B.* and ingroſſes Articles, whereby that Eſtate is to be ſettled on the Wife for a Jointure; he ſhall never defeat the Jointure by ſuch Intail. *R.* 2 *Ver.* 239.

If *A.* has a Statute for 1200*l.* of *B.* and afterwards is Counſel for *C.* who lends *B.* 200*l.* upon Mortgage; the Eſtate in Mortgage ſhall not be charged with the Statute at the Suit of *A.* till *C.* is ſatisfied the Whole due upon his Mortgage. *R.* 2 *Ver.* 370.

So, if *A.* having Notice of his own Title, after the Death of his Mother, encourages the making of a Settlement of the ſame Land upon the Marriage of *B.* his Siſter. *R. Eq. Ca.* 37. *

Or, if *A.* has Knowledge of the Settlement, tho' he does not encourage it, and tho' *B.* afterwards ſells without his Privity. *Eq. Ca.* 37. * *Dub. Eq. Ca.* 96. *

Tho' *A.* be an Infant, or *Feme Covert*. *Eq. Ca.* 37. * * 2d Part of 2 *Mod. Ca.*

So, if a Purchaſer, or Mortgagee, hearing of a prior Settlement in Truſt, obtains an Aſſignment from the Truſtee; it ſhall be ſubject to the Truſt, tho' it was intended to ſupport his Purchaſe, or Mortgage; for it was a Breach of Truſt, he having Notice of the Truſt. *R.* 2 *Ver.* 271.

If a Mortgagor preſents *A.* upon Simony, but afterwards waives him, and preſents *B.* who, hearing that the King intended to make a Preſentation, afterwards reſigns and takes a new Preſentation from the Mortgagor and alſo from the Mortgagee; the Preſentation by the Mortgagee ſhall not be made uſe of by *B.* to defend him againſt the Preſentation by the King. *R.* 2 *Ver.* 549, 550.

[If a Truſtee errs, or is guilty of a Breach of Truſt, yet if he goes out of it with the Approbation of the *Ceſtuy que Truſt*, it muſt firſt be made good out of the Perſon's Eſtate ſo conſenting. *Trafford* v. *Boehm*, *H.* 1746. 3 *Atkyns* 440.]

[If a Committee-man of a public Company is guilty of groſs Non-attendance, and leaves the Management intirely to others, he may be guilty of the Breach of Truſt committed by them; and this though he had no Benefit from the Truſt. *Charitable Corporation* v. *Sutton*, *T.* 1742. 2 *Atkyns* 400.]

[If there is a ſupine Negligence in all, by which a groſs complicated Loſs happens, they are all guilty. *Ibid.*]

But if a Man has a legal Eſtate, or Intereſt in Land ſubject to a Truſt, a Purchaſer *bonâ fide* ſhall not be affected by the Truſt; as, if the Deviſee of a Term, ſubject to Debts and Legacies, enters by the Aſſent of the Executor, and ſells to *A. bonâ fide*, *A.* ſhall not be prejudiced. *Ca. Ch.* 257. (4 W. 29.) Who not.

So, if a Man joins for Conformity, he ſhall not be charged thereby for the Breach of a Truſt; as, if two Truſtees join in a Receipt for Money, where one only receives it, he only ſhall be charged. 1 *Sal.* 318.

So, if two Executors give a Diſcharge for Money, and one only receives it, he alone ſhall be charged, as to Legacies. *Ibid.*

Yet both ſhall be charged to Creditors. *R.* 1 *Sal.* 318. *Semb. Bridg.* 38.

So, if one Truſtee only acts in the Truſt, the other ſhall not be charged. *R. Bridg.* 37, 8.

So, if two Truſtees join in a Sale and in a Receipt for the Money, and one of them receives Part, and the other the other Part, and becomes inſolvent, his Companion ſhall be charged only for ſo much as he received. *R.* 2 *Ver.* 504, 515.

So, if a Mortgagor pretends that he was in Treaty for a Leaſe, which would be an Improvement to the Eſtate, and deſires the Mortgagee will permit a Sight of the original Grant to ſatisfy the intended Leſſee, that he had a Power to make ſuch Leaſe, and the Mortgagor, having obtained ſuch original Grant, makes a Mort-

Mortgage to another Perſon; the firſt Mortgagee, not privy to his Deſign, ſhall not be prejudiced thereby. *R.* 2 *Ver.* 726.

So, if there be Tenant for Life, Remainder to Truſtees in Fee, upon Truſt for the firſt and other Sons of the Tenant for Life, in Tail, *&c.* if the Tenant for Life, the Truſtees, and the Iſſue in Tail join in a Feoffment and Fine, it is not a Breach of Truſt in the Truſtees, for they are only intruſted for the Iſſue in Tail. *R.* 2 *Ver.* 754.

But, if two Executors account for a Perſonal Eſtate, in which there is 200*l.* *Eaſt-India Stock*, which they afterwards ſell, and one receives 100*l.* and becomes inſolvent, the other ſhall be charged for the Whole; for there was no Neceſſity for his joining. *R.* 2 *Ver.* 504, 515, 570.

So, if two Truſtees join in a Sale and Receipt for the Money, both ſhall be charged, where it does not appear how much each received. 2 *Ver.* 516.

(4 W. 30.) What ſhall be a Breach of Truſt. If the Truſtee makes a private Advantage to himſelf.

So a Truſtee ſhall not take Advantage by the Management of the Truſt; and therefore, if a Truſtee compounds a Debt, or a Mortgage at an Under-value; it ſhall not be for his own Benefit, but for the Advantage of the Truſt-Eſtate. 1 *Sal.* 155.

[A Truſtee ſhall not purchaſe Lands deviſed to him for Payment of Debts; and tho' it is at a public Sale, and in another Perſon's Name it ſhall not be good. *Whelpdale* v. *Cookſon*, *P.* 1747. 1 *Vezey* 9.]

If a Truſtee lends the Money of an Infant, without the Approbation of *Chancery*, upon an improper Security, he ſhall anſwer to the Infant for the Money if it be loſt; as, if he lends it on the ſingle Bond of *B.* who fails, tho' then of good Credit. *R. Eq. R.* 10.

[If a Truſtee transfers Stock, it is a Breach of Truſt, and *Ceſtuy que Truſt*, may have the Stock, or the Money it ſold for. *Harriſon* v. *Harriſon*, *H.* 1740. 2 *Atkyns* 121.]

[If Money is ſettled to be laid out in Government-funds, or other good Securities, and it is laid out in the *Stock* of a trading Company, (as South-Sea or Bank) it is a Breach of Truſt; it ſhould be in Annuities. *Trafford* v. *Boehm*, *H.* 1746. 3 *Atkyns* 440.]

So, if he purchaſes Land with the Money of the Infant, without the Allowance of the Court; if it be diſallowed by the Infant at his full Age. *Eq. R.* 10.

But this ſhall be a Breach of Truſt, or not, at the Diſcretion of the Court; for every Thing, which the Court can allow a Truſtee to do, it may allow, when done; and therefore, the Purchaſe of a Copyhold contiguous at the Requeſt of the next of Kin was allowed, tho' diſapproved by the Huſband of the Infant. *Eq. R.* 10.

[Truſtees for ſupporting contingent Remainders are guilty of Breach of Truſt in joining to deſtroy them, whether the Settlement be voluntary, for valuable Conſideration, or by Will; and though Equity will, in ſome Caſes, compel Truſtees to join in ſuch Conveyance as will deſtroy contingent Remainders, yet it is then to anſwer the Uſes originally intended by the Settlement, but never to overturn all the Uſes of a Settlement. *Symance* v. *Tattam*. *T.* 1737. 1 *Atkyns* 613.]

[Committee-men, though not privy to an original Deſign, yet may be guilty by conniving, and not uſing the proper Power veſted in them to prevent the ill Conſequences of a Confederacy. *Charitable Corporation* v. *Sutton*, *T.* 1742. 2 *Atkyns* 400.]

Vide Ante, (4 W. 28.)

(4 W. 31.) What ſhall not be a Breach of Truſt.

But, if *A.* leaſes Lands for 1000 Years to *B.* and others, upon Truſt to be ſold for Payment of Debts in a Schedule annexed; it will not be a Breach of Truſt, if the Truſtees afterwards take an Eſtate of Inheritance from *A.* whereby the Term is merged, upon Truſt to pay thoſe and alſo other Debts. *R. Ch. R.* 479.

If the Truſtee of a Term for 99 Years for Payment of Debts and Legacies, agrees for an Under-Leaſe, and then the Debts and Legacies are ſatisfied by a Sale

Sale of Timber; the Leaſe ſhall be decreed, tho' he in Reverſion diſſents. 2 *Ver.* 647.

[If there is a mere Falling of Stock, without Fault of a Truſtee, he ſhall not be liable to make good the Deficiency, though he has paid Intereſt for the whole Sum after the fall of the Stock, amounting to more than the Dividends, but not ſo much as the common Intereſt. *Jackſon* v. *Jackſon*, *P.* 1737. 1 *Atkyns* 513.]

[Though there are no negative Words in the Deed, yet the Court will not make a Truſtee liable for more than he has received. *Leigh* v. *Barry*, *M.* 1747. 3 *Atkyns* 583.]

[Or if ſeveral Truſtees *(not Executors)* join in a Receipt, he only who received ſhall be liable. *Ibid.*]

[But if Truſtees bind themſelves to be liable for the Acts of each other, the Court will not relieve. *Ibid.*]

Vide Ante, (4 W. 29.)

So, it ſhall not be a Breach of Truſt, if the Truſtee compounds a Debt, with the Aſſent of the *Ceſtuy que Truſt*. *R. Ch. R.* 58. (4 W. 32.) If the Truſtee acts with the Privity of the *Ceſtuy que Truſt*.

(4 X) Waſte.

[IF a Perſon threatens or inſiſts on his Right to commit Waſte, as to open Mines reſerved, a Bill may be brought to reſtrain him, though no Waſte actually committed. *Gibſon* v. *Smith*, *P.* 1741. 2 *Atkyns* 182.]

[If Tenant for Life inſiſts on a Right to commit Waſte, the Reverſioner may have an Injunction. *Ibid.*]

Upon an *Affidvavit* of Waſte committed, *Chancery* will grant an Injunction to ſtay the Waſte. *Vide Ante*, (D. 11.)

So, if Tenant for Life, without Impeachment of Waſte, commits voluntary Waſte, an Injunction ſhall be granted to ſtay ſuch voluntary Waſte. 2 *Ver.* 738.

[The Court will not entertain a Bill for an Account, and Satisfaction for Waſte, (in cutting Timber) brought after Determination of the Tenant's Eſtate by Aſſignment, unleſs an Injunction is prayed. *Jeſus College* v. *Bloome*. *M.* 1745. 3 *Atkyns* 262.]

And after a Settlement upon his Son in Marriage, if he commits voluntary Waſte and Deſtruction, to the Prejudice of his Son in Remainder, he ſhall make Reparation, or Recompence for the Waſte committed. *R.* 2 *Ver.* 738.

[If *A.* Tenant for 99 Years, if he ſo long live, without Waſte, except voluntary; Remainder to Truſtees to preſerve, *&c.*; Remainder to firſt and other Sons; Remainder to *B.* in Fee; agrees, before a Son born, with *B.* to whom he is indebted on Mortgage, to cut down Timber, *B.* not to take Advantage of the Waſte, and the Money to be divided, which is done; and then *A.* has a Son, who attains Twenty-one, and ſuffers Recovery to himſelf and his Heirs; the Executors of *B.* admitting Aſſets ſhall refund, with Intereſt at 4 *per Cent.* from filing the Bill. *Garth.* v. *Cotton*, *H.* 1753. 3 *Atkyns* 751. 1 *Vezey* 524, 546.]

[Truſtees to preſerve contingent Remainders may have an Injunction to ſtay Waſte before the contingent Remainder-man is *in eſſe*; and if Waſte is committed afterwards, the Offenders ſhall pay the Value, which ſhall be laid up for the contingent Uſes. *Ibid.*]

But if an Eſtate be deviſed to *A.* for Life, and afterward to *B.* in Fee, if he pays certain Legacies within ſuch a Time, and if he does not pay them to *C.* he paying thoſe Legacies; Equity will allow *B.* to cut down Timber growing upon the Land, for Payment of the Legacies, without the Aſſent of *A.* or *C.* paying for the Damage to *A.* if any is done. *R.* 2 *Ver.* 152.

[Tenant for Life, without Waſte, may cut Trees (even not full grown (though to the Prejudice of the Remainder-man. *Aſton* v. *Aſton*, *T.* 1749. 1 *Vezey* 264.]

[But if a Term is created to reimburſe Tenant for Life, without Waſte, the Expences of ſupporting the Eſtate, and he cuts all the Timber, he ſhall not be

allowed any Thing under the Term for buying Timber for Repairs, without reimburſing the Eſtate for Timber unreaſonably cut. *Ibid.*]

So, if a Term be aſſigned in Truſt for *A.* for Life, and afterwards for *B.* for Life without Impeachment of Waſte; Equity will allow *B.* to cut down Timber for his Maintenance, in the Life-time of *A. R.* 2 *Ver.* 218.

If the Leſſee of a Tenant for Life has committed Waſt *ſparſim*, but has alſo improved the Land, he ſhall be aided on Payment for the Waſt, and Acceptance of a Leaſe with an Increaſe of Rent. *Q.* 2 *Ver.* 263.

Tenant for Life, though without Impeachment of Waſte, is obliged to keep Tenants Houſes in Repair, unleſs the Charge is exceſſive; and ſhall not ſuffer them to run to Ruin. *Pateriche* v. *Powlet*, *T.* 1742. 2 *Atkyns* 383.]

[If Son brings Bill againſt his Father Tenant for Life without Waſte, for Waſte in taking up a Floor he had laid down, tranſplanting young Oaks he had planted, turning Arable to Paſture, and *vice verſa*, and no Injunction is applied for, the Bill will be diſmiſſed. *Piers* v. *Piers*, *T.* 1750. 1 *Vezey* 521.]

[If Guardian converts Infants ancient Paſture into Arable, it is Waſte, tho' he alledges it was on account of the Diſtemper among Cattle. *Clarke* v. *Thorpe*, *H.* 1750. 2 *Vezey* 232.]

CHAPPEL.

Vide Egliſe, (D.)

CHAPTER.

Vide Eccleſiaſtical Perſons, (C. 3.)

CHARITABLE USES.

Vide Chancery, (2 N. 1, &c.)—*Uſes*, N. 1, &c.)

CHARTER.

Vide Franchiſes, (F. 5, &c.)—*Juſtices of Peace*, (A. 5.)—*Trade*, (B.—D. 1.)

CHARTERS.

(A) To whom the Property of them belongs.

IF a Man ſeiſed in Fee conveys Land to another and his Heirs, without Warranty, all the Charters belong to the Feoffee as incident to the Land, whether they comprize Warranty, or not; for the Feoffor has no Uſe for them, but the Feoffee muſt defend his Title at his Peril. *R.* 1 *Co.* 1. *a.*

And all Charters belong to the Feoffee without Warranty, tho' they be not granted by the Conveyance. *R.* 1 *Co.* 1. *a.*

So, in all Caſes, the Charters, Muniments, and Evidences of Land belong to him who has the Inheritance of the Land, as incident to it, if another Perſon be not bound to Warranty,

And therefore, if *A.* enfeoffs *B.* by the Word (*Dedi*), which imports a Warranty during the Life of the Feoffor, after his Death *B.* ſhall have all the Charters. 1 *Co.* 2. *b.*

So, if a Man enfeoffs another with Warranty, who dies without an Heir, the Lord by Eſcheat ſhall have all the Charters; for he is in in the *Poſt*, and the Feoffor is not bound to warrant him. 1 *Co.* 2. *a.*

So, if a Feoffment be to two and their Heirs, the Survivor ſhall have all the Charters, *&c.* and not the Heir of him who died; for he has no Uſe for them. 1 *Co.* 2. *b.*

So Charters, *&c.* which are neceſſary to maintain his Title to the Poſſeſſion, belong to him who has the Land tho' another be bound to Warranty; as if a Thing which lies in Grant, as a Seigniory, Rent, *&c.* be granted with Warranty, the Grantee ſhall have the firſt Deed; for it is neceſſary to make his Title againſt the Grantor himſelf, or any claiming under him. *R.* 1 *Co.* 1. *b.*

So, if a Feoffment be made of Land with Warranty, the Feoffee ſhall have Court-Rolls, *&c.* which concern the Poſſeſſion only, and not the Title. 1 *Co.* 1. *b.*

So, if the Feoffor grants the Charters to the Feoffee by his Conveyance, the Feoffee ſhall have them, tho' the Feoffor be bound to Warranty. 1 *Co.* 1. *b.*

If a Grant be by Indenture, every one ought to have his Part; for every one who pleads it ought to produce it for that which belongs to him. *Co. L.* 143. *b.*

And therefore, if only one Part be executed, it ſhall be depoſited in the Hand of a common Friend. *Co. L.* 143. *b.*

But if a Man make a Feoffment with Warranty, without a Grant of the Charters, he ſhall have all the Charters and Evidences which contain Warranty, or are neceſſary to deraign the Warranty *Paramount*, or are material for the Maintenance of the Title of the Land; for the Feoffee relies upon his Warranty. *R.* 1 *Co.* 1. *b.* *Co. L.* 6. *a.*

So the Heir of the Feoffor ſhall have them, tho' he has nothing by Deſcent; for he may be vouched. *R.* 1 *Co.* 1. *b.*

So the Feoffor ſhall have them, tho' the Feoffee, as Aſſignee, may vouch thoſe who are bound to Warranty *Paramount*; for he may alſo vouch the Feoffor if he pleaſes. *R.* 1 *Co.* 1. *b.*

(B) Detinue of Charters.

(B. 1.) When it lies.

IF a Man detains Charters, which concern the Inheritance of another, he may have *Detinue of Charters* againſt him. *Co. L.* 286. *b.* *Vide Detinue, (A.)* *Vide Pleader, (2 X. 1, &c.*

So, if he detains a Statute, Obligation, Releaſe, Articles of Agreement, Teſtament, *&c.* *Reg.* 159. *b.*

So a Man may have *Detinue* for any Charters, which make his Title ſure. *F. N. B.* 138. *K.*

As, if *A.* leaſe for Years, and afterwards confirm the Eſtate to the Leſſee and his Heirs; the Heir ſhall have *Detinue* for the Leaſe, as well as for the Deed of Confirmation. *Ibid.*

If the Donee in Tail die without Iſſue, the Donor ſhall have *Detinue* for the Deed which the Donee had. *F. N. B.* 138. *F.*

If a Feoffment be to *A.* and *B.* and the Heirs of *B.* and *A.* dies; *B.* or his Heirs ſhall have *Detinue* for his Deed. *Ibid.*

So the Iſſue in Tail ſhall have *Detinue* againſt the Diſcontinuee, for the Deed of Intail. *F. N. B.* 138. *H.*

Detinue of Charters bailed or found, in the Life of the Anceſtor, ought to be brought by the Heir, and not by the Executor, or Adminiſtrator. *F. N. B.* 138. *I.*

And it may be brought by the Heir, tho' he has not the Land: As if *A.* being enfeoffed with Warranty, enfeoffs *B.* with Warranty; the Heir of *A.* may have *Detinue* for the Deed of the firſt Feoffment. *F. N. B.* 138. *I.*

So

So the Heir of the Diſſeiſee may have *Detinue* for the Charters, before Entry. *F. N. B.* 138. *L.*

(B. 2.) What ſhall be the Proceeding.

Detinue of Charters concerns the Realty, and therefore ſhall be brought only in *C. B. F. N. B.* 138. *B. C. Reg.* 159. *b.*

Or, in the County by *Juſticies. F. N. B.* 138. *B. Reg.* 159.

And if it be brought in *B. R.* or any other Court, a *Superſedeas* lies. *F. N. B.* 138. *C.*

There ſhall be Summons and Severance, as in other real Actions. *Co. L.* 286. *b.*

But a *Capias* does not lie, nor Proceſs to Outlawry, as in *Detinue for Goods. Co. L.* 286. *b.*

The Declaration in *Detinue for Charters* ought to be certain, as well as *Detinue for Goods. Vide Pleader,* (2 X. 2.)

And therefore, it ought to ſhew the Certainty of the Charters demanded, and what Lands they concern, except where they are in a Bag ſealed, or a Cheſt locked, and then it is not neceſſary. *Co. L.* 286. *b. Reg.* 160. *a.*

So it ought always to mention the certain Number. *Reg.* 159. *b.* 160. *a.*

And if they are in a Cheſt or Bag ſealed, it may alſo mention the Certainty, if it be known. *Bro. Ent.* 148.

At leaſt it is proper to deſcribe one of the Charters with Certainty, if it may be, and then the Defendant cannot wage his Law. *Co. L.* 286. *b.*

But if the Declaration mentions the Bag to be ſealed, or the Cheſt to be locked, it is ſufficient, tho' it be not ſo; for it is not traverſable. *Reg.* 160. *a.*

(B. 3.) Plea in Detinue for Charters.

To *Detinue* for Charters the Defendant may plead *Touts temps priſt. Vide Pleader,* (2 X. 3, &c.)

So the Defendant may plead, that the Charters were delivered by the Plaintiff and a Stranger *æqua manu*, upon Conditions which he knows not whether they are performed, and pray that the Stranger may be warned, *Vide Pleader,* (2 X. 8.)

Vide Pleader, (2 Y. 6.)

When Charters are allowed in Evidence.

Vide Evidence, (B. 1, &c.)

CHARTER-PARTY.

Vide Merchant, (E. 2, &c.)

CHASE.

(A) Foreſt.

(A. 1.) What ſhall be.

A Foreſt is a Place of Wood and Paſture, diſtinguiſhed *Metis & Bundis*, for the Cuſtody of Beaſts and Birds of the Foreſt, (*viz.* Hart, Hind, Hare, Boar, and Wolf,) the Chaſe, (*viz.* Buck, Doe, Fox, Martron and Roe,) and the Warren,

ren, (*viz.* Hare, Coney, Pheaſant, and Partridge,) and repleniſhed with Vert and Veniſon, for the Preſervation of which peculiar Laws, Privileges, and Officers belong. *Manw.* 40. 4 *Inſt.* 289, 298.

A Foreſt comprehends in it a Chaſe, Park, and Warren. *Manw.* 52.

And may be made by Act of Parliament. 4 *Inſt.* 301.

Or the King, by Commiſſion to the Sheriff or Commiſſioners, may order, that they make a Perambulation in ſuch a Country, and ſo much as appears to be convenient for a Foreſt that they ſurround it by Meers and Bounds. *Manw.* 57.

And upon the Return of ſuch a Commiſſion into *Chancery*, the King may iſſue a Writ to the Sheriff reciting the former Commiſſion and Return, and commanding him that he proclaim it throughout the Country to be a Foreſt. *Manw.* 59.

And if after a Writ to proclaim it, and a Return of it, the King grant proper Officers and Courts, it commences a Foreſt. *Manw.* 60.

So the King may claim a Foreſt by Preſcription. 4 *Inſt.* 301.

And it may be claimed by Preſcription in the Lands of a Subject, for it might have a lawful Commencement. *Ibid.*

(A. 2.) Who ſhall have it.

But none can make a Foreſt, except the King. *Manw.* 71.

So the King cannot make a Foreſt in the Lands of a Subject without his Conſent. 4 *Inſt.* 301. *Semb. Cont. Manw.* 55.

And it is not proved a Foreſt by being called a Foreſt in Records, *&c.* but by having Courts, and Officers, *&c.* 4 *Inſt.* 298. *R.* 12 *Co.* 22.

So by the St. 16 *Car.* 16. The Meers, Limits, Bounds, *&c.* of every Foreſt ſhall not extend beyond what were taken to be ſo 20 *Ja.* 1.

And no Place ſhall be taken to be Foreſt, or within a Foreſt where no Juſtice Seat, Swainmote, or Court of Attachments had been held. or Verderors choſen, or Regard made within 60 Years before the Reign of *Charles* I.

Yet the King may by expreſs Words grant a Foreſt to a Subject. *Co. L.* 233. *a. Manw.* 72, 75. *per* 2 *Judg. Cont.* 1 *Rol.* 112.

And by ſuch Grant of a Foreſt *cum omnibus incidentibus, appendiciis, & pertinentiis*, the Subject ſhall have the Foreſt with all Courts, and Officers, except the Juſtice in *Eyre*. *Manw.* 76, 78, 81. *R.* 2 *Cro.* 155. 1 *Bul.* 296.

So by expreſs Words, the King may grant to a Subject to have *Jura Regalia* to make a Juſtice in *Eyre, &c. Manw.* 76.

But if a Foreſt be Parcel of a Manor, by a Grant of the Manor *cum pertinentiis* to a Subject, the Foreſt does not paſs. *R. Pal.* 60, 92.

(B) Chaſe.

What ſhall be.

A CHASE is the ſame Liberty as a Park, ſave that it is not incloſed. *Manw.* 52.

And therefore, a Chaſe has no Officers or Courts, as a Foreſt has. *Ibid.*

And Offenders there ſhall not be puniſhed by the Laws of the Foreſt, but by the Common Law, or Statutes. *Ibid.*

A free Chaſe may be claimed by Grant, or Preſcription. 1 *Rol.* 112.

It may be claimed in his own Wood, as appurtenant to his Manor. 4 *Inſt.* 318.

Or within a Foreſt. *Jon.* 278.

So, by Preſcription, it may be in the Soil of another.

It may be claimed for Red-Deer by ſpecial Licence. *Jon.* 278.

If the King makes a Commiſſion to incloſe a Foreſt and it be proclaimed a Foreſt, it ſhall be only a Chaſe till the proper Officers and Courts are granted. *Manw.* 60.

If the King grant a Foreſt to a Subject without the Words, *to have Courts and Officers of a Foreſt*; it ſhall be only a Chaſe in the Hands of a Subject. *Manw.* 80. *R.* 2 *Cro.* 155. *D. Pal.* 89, 90.

But none can make a Chaſe, or a Park within his own Land, or elſewhere, without the King's Grant. *Manw.* 56. 2 *Inſt.* 199.

And if he does ſo, a *Quo Warranto* lies. *Manw.* 56.

So the Owner of a Chaſe ſhall be fined, if he kill a Beaſt of the Foreſt, or refuſe to drive back a Beaſt of the Foreſt out of the Chaſe. *Jon.* 278.

(C) Park.

A PARK is a Territory incloſed, which has a Privilege for Beaſts of Chaſe, by Preſcription, or the King's Grant. *Co. Lit.* 233. *a.* 2 *Inſt.* 199. *Bridg.* 26.

And it may be within his own Soil.

Or by the Licence of the King, or the Owner of the Foreſt within the Limits of a Foreſt. *Manw.* 85, 89, 90. *Bridg.* 26.

And if ſuch Park in a Foreſt be laid down for ſeveral Years, it may afterwards be incloſed *de novo*. *Manw.* 82. *R.* 2 *Cro.* 156.

And the Owner of the Park may kill any Beaſts which he finds in his Park, tho' they come out of the Foreſt. 2 *Cro.* 156.

But a Park within a Foreſt ought to be incloſed, to prevent Beaſts of the Foreſt from coming into it. *Manw.* 90. *R. Bridg.* 26.

And the Owner may diſpark his Park, if he grants or deſtroys all the Veniſon, Vert, or Incloſure. *R. Cro. Car.* 60.

(D) Warren.

A FREE Warren is a Privilege, which a Man claims by Grant, or Preſcription, to have Beaſts of a Warren in his Land, or Demeſnes, *ita quod nullus intret ad fugandum vel Capiendum quod ad Warrennam pertinet*. 2 Rol. 812. l. 5. to 20.

A Warren is a Privilege diſtinct from the Land, and by a Leaſe of the Land, without more, does not paſs. *Dy.* 30. *in Marg.*

Nor, by an Alienation of the Land, without ſaying, *Cum pertinentiis*. Dy. 30. b.

Or, if it be ſaid, *Cum pertinentiis*, where he has a Warren by Grant, not by Preſcription. *Dy.* 30. *b. in Marg.*

So it may be granted or claimed, within a Free Chaſe of the King. 4 *Inſt.* 298. 12 *Co.* 22.

And the Grantee may there build a Lodge upon his own Inheritance. 4 *Inſt.* 298.

So it may be claimed in a Foreſt of the King. *R. Manw.* 81. *R.* 2 *Cro.* 155. *Jon.* 280, 296.

And tho' it have not been uſed for many Years, the Preſcription ſhall not be deſtroyed. *Manw.* 81. 2 *Cro.* 155. *Vide Liberties*, (C. 2.)

If there be a Warren by Charter within his Manor, he may make Burrows, and build a Lodge in any Part of the Manor *de novo*. *Manw.* 82. 12 *Co.* 22. *R.* 2 *Cro.* 156.

If it be claimed by Preſcription, he ought to make them in the antient Place. *Ibid.*

But a Man cannot preſcribe for a Warren in the Lands of a Stranger, which are not within his Seigniory. 2 *Rol.* 265. *l.* 52.

And if the King grants to *B.* a Warren within his Manor, he ſhall have it only in the Demeſnes, not in the Land of the Freeholders. *Cro. El.* 463.

So none can make a Warren in his own Land without the King's Licence, becauſe he cannot appropriate to himſelf *Feras Naturæ*, which are *Nullius in Bonis*. 2 *Rol.* 812. *l.* 25. 11 *Co.* 87. *b.* 2 *Inſt.* 199.

(E) Beasts of the Forest, and Chase.

THERE are five Beasts, which are properly Beasts of Forest, or Venary; *viz.* The Hart, Hind, Hare, Boar, and Wolf. *Manw.* 91. 8 *Co.* 138. *b.*

The Hart is so named when in his sixth Year, being called in the first Year, *Hindcalf, or Calf*, in the second *Broket*, in the third *Spayad*, in the fourth *Staggard*, in the fifth *Stag*, in the sixth *Hart*. *Manw.* 98.

After being chased by the King, it is an *Hart Royal*; and if a Proclamation goes for his Return to the Forest after the Chase, *a Hart Royal proclaimed*. Manw. 99.

The Hind in the first Year is called *Calf*, in the second *Brocket's Sister*, in the third *an Hind*. Manw. 100.

The Hare is a *Leveret* in the first, *an Hare* in the second, and *a great Hare* in the third Year. *Ibid.*

The Boar in the first Year is *a Pig of the Sounder*, in the second *an Hog*, in the third *an Hogstear*, in the fourth *a Boar*. Ibid.

So there are properly five Beasts of Chase, or Park; *viz.* Buck, Doe, Fox, Martron and Roe. *Manw.* 94. *Co. L.* 233. *a.* 8 *Co.* 138. *b.*

Every Beast of Forest, and Chase is properly called Venison, *(Venatio.)* Manw. 111.

And therefore, if any kill an Hare within a Forest, he shall answer for a Trespass upon the Venison of the Forest. *Ibid.*

And every Trespass to the Forest is to the Vert, or Venison. *Manw.* 112.

(F) Beasts of the Warren.

SO Beasts of Warren are properly two; *viz.* Hare and Coney. *Manw.* 95 But *Co. L.* 233. *a.* names a Roe to be a Beast of Warren. Hare and Coney are named. 8 *Co.* 138. *b.*

The Fowls of Warren are only Pheasant and Partridge. *Manw.* 95. 8 *Co.* 138. *b.*

But *Volucres Campestres*, as Quail, Raile, *&c.* and *Silvestres*, as Woodcock, *&c.* and *Aquatiles*, as Herne, Mallard, *&c.* are also named Fowls of Warren. *Co. L.* 233. *a.*

But the Lord of a Manor may prescribe, for himself and his Tenants, to take Fowl in the Warren of another. *R.* 3 *Mod.* 246.

So he, who has a Warren in a Forest, must keep it well inclosed, that the Conies do not escape into the Forest. *Jon.* 296.

(G 1.) Meers of a Forest.

EVERY Forest and Chase ought to be distinguished by Meers and Limits, without which it cannot be a Forest. *Manw.* 48, 128. 4 *Inst.* 289, 317, 318..

And the Meers are Parcel of the Forest. *Manw.* 131.

And by the *St. de Ass. & Conf. For.* 6 *Ed.* 1. *Omnes Metæ Forestæ sunt integræ Domino Regi.* Manw. 130, 131.

And therefore, every Beast of Forest killed in the Highway, River, *&c.* being the Meers of the Forest, shall be an Offence of the same Nature, as if he was killed within the Forest. *Manw.* 131.

But a Manor, Land, Wood, *&c.* within the Meers of the Forest, by the King's Charter may be exempted out of the Regard of the Forest. *Manw.* 133.

Yet it shall not be exempted by Prescription; for by the *St.* 6 *Ed.* 1. Meers are established, and there can be no Prescription since. *Jon.* 271.

(G. 2.)

(G. 2.) Perambulation.

When a *Perambulatione facienda* lies, *Vide Pleader*, (3 G.)

(H) Hunting, or Hawking in a Foreſt.

(H. 1.) Who may do it.

NONE can hunt, or hawk within a Foreſt, except the King, or by the King's Warrant or Authority. But the King himſelf may do it.

So by *Charta de Foreſta*, 9 *H.* 11. An Archbiſhop, Biſhop, Earl, or Baron coming to the King, at his Command, or in Return by a Foreſt, may take and kill one or two Deer there by View of the Foreſter, or, if he be abſent, he ſhall blow an Horn.

So every one, who has a Licence from the King or a Subject to hunt, *&c.* within his Foreſt, Chaſe, Park, *&c.* may do it. *Manw.*

Tho' the Licence be only by *Parol.* *Manw.* 289.

So, if he is intitled to have a Deer, *&c.* as a Fee incident to his Office; for that is a Licence in Law. *Manw.* 285.

So every one, who has a Grant or Charter of the King, allowed in the *Eyre* for hunting or hawking within a Foreſt. *Manw.* 275.

And if the Licence be *for hunting, killing, and carrying away*, he may hunt there with Servants and others; for he has an Intereſt in the Thing. *Manw.* 278. *R.* 13 *H.* 7. 13. *a. b.*

So, if he has a Warrant to a Foreſter, *&c. to deliver him a Buck*, he may with himſelf and Servants hunt the Buck with the Foreſter. *Manw.* 279. *R.* 13 *H.* 7. 13. *a.*

If he has a Licence *for him and his Servants to hunt at his Pleaſure*, he may alſo kill and carry away; for the Licence for the Servant imports an Intereſt in the Thing. *Manw.* 279, 280.

(H. 2.) Who not.

But none can hunt, or hawk within a Foreſt without the King's Authority. *Manw.* 275.

Tho' it be within his own Land, or Manor in the Foreſt. *Manw.* 276.

So every one, who receives within a Foreſt a Malefactor in the Foreſt or Veniſon of the King, knowing him to be ſo, will be a principal Treſpaſſer. 4 *Inſt.* 317.

So a Biſhop, or Baron cannot hunt there, except in his Journey to the King, by his Command, and in View of the Foreſter, or when he ſounds an Horn. *Manw.* 276.

So an Officer, who is intitled to a Deer for his Fee, *&c.* muſt have a Warrant; and if the Foreſter, *&c.* refuſe or omit to deliver it, he may hunt by himſelf and his Servants, but not before ſerving the Warrant upon the Foreſter. *Manw.* 284.

So, if any one, who has the King's Licence or Warrant, does not purſue his Licence, it will be a Treſpaſs *ab initio*. *Manw.* 277, 280, 288.

As, if the Licence be for killing *a Buck*, *&c.* he cannot kill another Deer. *Manw.* 277.

If it be only *for killing*, he cannot afterwards carry it away. *Manw.* 277, 279.

If it be to a Knight, *&c. for hunting*, without more, he cannot hunt with his Servants, or other Company; for it is a Matter of Pleaſure only. *Manw.* 278. *R.* 13 *H.* 7. 13. *b.*

Or, *for hunting and killing for the Honour of the Owner*. Manw. 277.

Nor can he aſſign his Licence to another. *Manw.* 278, 279.

So a Licence for hunting in a Chaſe, Park, or Warren muſt be purſued in the very Manner. *Manw.* 277, *&c.*

(H. 3.) By whom a Licence may be given.

So none can hunt, *&c.* within a Foreſt, unleſs he has a Licence from the proper Perſon; for a Licence from the Foreſter, Keeper, *&c.* does not avail. *Manw.* 281.

But the Licence muſt be by the King himſelf. *Manw.* 280, 281.

Or by Preſcription, which ſuppoſes a Grant of the King; as where an Officer has a Buck, *&c.* as a Fee.

So Juſtices in *Eyre* may give Licence to any to hunt, *&c.* within his own Manor, or Land in the Foreſt. *Manw.* 281.

So a Man, who by a Charter, or Grant of the King, has Authority within a particular Part of the Foreſt, may give Licence to another within ſuch Precinct. *Ibid.*

So, if a Subject has a Foreſt, he may licenſe another to hunt, *&c.* in it. *Ibid.*

(H. 4.) How Hunting, *&c.* there ſhall be puniſhed.

By the *Conſt. Canuti* 22, 23, 24, 25, (which are ſuſpected, 4 *Inſt.* 320.) the Penalty of hunting in a Foreſt was 10*s.* for a Freeman, double for killing, in another Man double, in a Villein, Death. *Manw.* 3.

By the *St. Ch. de For.* 9 *H.* 3. 10. No Man ſhall loſe Life or Member for killing our Deer; but if taken therewith and convict for taking our Veniſon, he ſhall make grievous Fine; or, if he hath nothing, he ſhall be impriſoned a Year and a Day, and then delivered, if he can find ſufficient Sureties, otherwiſe abjure the Realm.

By the *St. de Mal. in Parcis*, 3 *Ed.* 1. 20. If any be attainted for Treſpaſs in Parks and Ponds at the Suit of the Party, large Amends ſhall be made, three Years Impriſonment, Fine at the King's Pleaſure, and Surety not to offend after; if not able to fine, or find Surety, he ſhall abjure, *&c.*

If none ſue within a Year, the King ſhall have the Suit.

So by *Ord. For.* 6 *Ed.* 1. *Si quis ceperit Feram ſine Warranto in Foreſta, arreſtetur, &c. infra Metas Foreſtæ, & non deliberetur ſine præceptu Domini Regis, vel Capitalis Juſticiarii Foreſtæ.* Manw. 291.

And therefore, every one taken in the Manner within a Foreſt may be arreſted by the Foreſter, and impriſoned till delivered by an *Homine Replegiando*, or a Precept of the Juſtice in *Eyre*. *Ibid.*

And if Bail be given upon the *Homine Replegiando*, or ſuch Precept, he may afterwards be indicted and fined at the Diſcretion of the Chief Juſtice of the Foreſt, and impriſoned till Payment of the Fine, and giving Surety for his good Behaviour in the Foreſt thenceforth. *Manw.* 293.

So he may be arreſted within the Foreſt, and impriſoned, if found in hunting there, tho' he takes or kills nothing. *Manw.* 291.

So, if he be found in the Manner in any Reſpect, *viz.* Stable Stand, Dog-draw, Backbear, or bloody Hand. *Manw.* 292.

As, if he be taken with a Gun, Dog, *&c.* to kill Deer. *Ibid.*

Or, after killing it purſue with a Dog, carry it on his Back, or be ſtained with Blood, tho' he be not ſeen in hunting. *Ibid.*

So, if he enter with Intent to hunt, and if found with a Bow, Dog, *&c.* tho' he does nothing; for the Will is taken for the Deed. *Ibid.*

But the Chief Juſtice in *Eyre* by his Warrant to a Meſſenger cannot apprehend any accuſed upon Oath before him of hunting in the Foreſt, if he be not indicted, nor found in the Manner. *R. Carth.* 78.

(H. 5.) By Action at Common Law.

So, for hunting in a Chaſe of the King, or of another, he may be ſued by an Action at Common Law. *F. N. B.* 67. *D.*

So, for hunting in a Foreſt, Park, *&c.*

So, for hunting in his Cloſe, and killing a Deer there. 10 *H.* 7. 6. *b.* 30. *a.*

And the Plaintiff ſhall recover Damages for the Value of the Deer, tho' no Value is mentioned in the Declaration, as well as for entring his Cloſe. 10 *H.* 7. 6.

So, for hunting in a Park, he may be ſued within a Year, by an Action upon the *St. W.* 1. 20. *de Malefactoribus in Parcis. Reg.* 80. *b.* 111. *b.*

And by the King, after a Year and a Day. *Reg.* 80. *b.*

And the Plaintiff may ſue for Treſpaſſes in ſeveral Parks together. *R.* 13 *H.* 7. 12. *b.*

But an Action does not lie upon this Statute, except for hunting in antient Parks. By the better Opinion. *Dal.* 60.

Nor, for hunting in a Foreſt or Chaſe. *Semb. Reg.* 80. *b.*

So to Treſpaſs in a Park, the Defendant may plead a Feoffment, *&c.* to *A.* before the Treſpaſs, and that he by the Command of *A.* hunted, *&c.* 13 *H.* 7. 13. *a.*

A Licence by the Plaintiff to *B.* and the Defendant as his Servant with the Parker took it. *Ibid.*

(I) The Purlieu of a Foreſt.

(I. 1.) What ſhall be.

PURLIEU, or *Pourluy*, is a Contraction or Corruption of the Word, *Pouralleé*, which imports a Perambulation. *Manw.* 365.

For in the Time of *H.* 2. *R.* 1. *and John*, many Lands adjoining to the King's Foreſts were incroached within the Foreſt, which by *Charta de Foreſtâ* 1, 3. *made* 17 *John, and confirmed* 9 *H.* 3. were to be diſafforeſted, and afterwards by Perambulations made in the Time of *Edw.* 1. and *Edw.* 3. diſafforeſted; and the Lands ſo diſafforeſted are named the *Purlieu* or *Pouralleé*. *Manw.* 319. *to* 365.

And therefore, the Purlieu of a Foreſt is Land adjoining to a Foreſt known by Meers immoveable upon Record, which was within the Foreſt, but is now diſafforeſted. *Manw.* 318.

And the Purlieu is exempt from the Foreſt; for it is *infra Metas*, not *infra Regard' Foreſtæ*. *Manw.* 87.

The Owner may cut down his Wood, plow, or improve his Land without Licence.

But by *Ch. de For.* 9 *H.* 3. 1. *Foreſtæ quas H.* 2. *afforeſtavit, &c. ad dampnum illius cujus Boſcus, &c. fuit, deafforeſtentur.*

And therefore, the Purlieu was diſafforeſted only for the Benefit of the Owner, and as to others, it remains within the Foreſt. *Manw.* 366.

And the Owner may ſuffer his Wood to be now within the Foreſt.

So Beaſts of the Foreſt may haunt within the *Purlieu*, and none can chaſe them there, but the Owner of the Soil.

And the Owner of the Soil cannot kill them. *Jon.* 278.

(I. 2.) Who may hunt within a *Purlieu*.

(I. 2.) The Owner of the Soil.

The Owner of the Land or Wood, within a *Purlieu*, may hunt with Dogs Beaſts of the Foreſt found in his Soil, towards the Foreſt; ſo that he does not foreſtall, or foreſet them in their Return.

And if he finds them in his own Soil, he may chaſe them towards the Foreſt by the Land of others.

And every Owner of Land within a *Purlieu* may chaſe them towards the Foreſt with a ſmall Dog.

So, if he be a *Purlieu* Man, *viz.* if he have a Freehold of 40*s.* *per Annum* within the *Purlieu*, he may chaſe them with a Greyhound, or bigger Dog. *Manw.* 371.

And he may kill them before they paſs the Limit, or Brink of the Foreſt.

And may take the Deer, *&c.* killed to his own proper Uſe.

So if a Dog faſten upon a Deer, *&c.* before ſhe gains *filum Foreſtæ*, and ſhe drags the Dog into the Foreſt, and there is killed, the Owner may purſue and take the Deer out of the Foreſt.

So, if a *Purlieu* Man purſue Deer towards the Foreſt, and by an Horn, *&c.* call off his Dogs before they enter into the Foreſt; he is no Treſpaſſer, tho' the Dog purſue and kill the Deer within the Foreſt, if he himſelf does not enter the Foreſt, nor take the Deer.

But a Man, who has Land within a *Purlieu*, cannot by Gun, Croſs Bow, Hay, or other Engine foreſtall, or foreſet the Beaſts of the Foreſt in their Return to the Foreſt. *Manw.* 384, 373.

Nor can he kill unſeaſonable Game within the *Purlieu*; as a Deer of Antler in Winter, or Doe in Summer. *Manw.* 384.

Nor, at an unſeaſonable Time; as, in the Night, or *die Dominico*. *Manw.* 380.

Nor, in the *Fence-Month*, which begins fifteen Days before *Midſummer*, and ends fifteen Days after *Midſummer*. *Manw.* 381.

Nor above three Days in a Week. *Manw.* 381, 2.

Nor, within forty Days after the King has made a general Hunting within the adjoining Foreſt. *Manw.* 382, 3.

Or, within forty Days before the Time proclaimed for the King's hunting within the Foreſt. *Manw.* 383.

Or, during the Time when an Officer of the Foreſt is in the Execution of a Warrant for taking a Deer, *&c.* within the Foreſt adjoining. *Ibid.*

So he can hunt only with his own Servants within the *Purlieu*, and not with other Company. *Manw.* 382.

(K) Common Nuſance.

SO any Thing, which will be a Nuſance by Law, if done out of the Foreſt, if it be done within it, will be a Nuſance to the Foreſt.

As, if one erect Cottages there without Licence; tho' it be for the Poor of the Pariſh. *Jon.* 269.

If he incloſes a Lane within the Foreſt. *Ibid.*

If he ſets up a Ferry, where none was before; for the Deer may be the more eaſily carried away. *Jon.* 274.

If he carries a Gun in the Foreſt, with Intent to kill Deer. *Jon.* 275.

Or conceals the Killing. *Ibid.*

If he burns Heath, Furze, *&c.* within the Foreſt. *Jon.* 276.

If he builds a Wall, whereby the Highway is ſtraitned. *Jon.* 277. unleſs it appear *per Miniſtros Foreſtæ quod eſt competens Paſſagium.*

If Beaſts damage the Wood of *B.* within a Foreſt, tho' *B.* ought to maintain the Fence; for the Owner of the Beaſts ought to requeſt *B.* to make up the Fence; and if he does not, he ought to do it himſelf, and ſhall have an Action upon the Caſe for it againſt *B.* *Jon.* 277.

If he erects a Windmill within the Foreſt, tho' it be upon his own Soil. *Jon.* 293.

But by a Licence from the Juſtices in *Eyre*, an Incloſure may be made, a Cottage erected and arrented *in perpetuum*, if the Licence be *ſedente Curia*, otherwiſe it may be re-ſeized. *Jon.* 277.

(L) Purpreſture.

SO, if a Man by Building, Incloſure, or uſing any Liberty, or Privilege, without Warrant, incroach upon the Rights of the Foreſt, it will be Purpreſture and an Offence to the Foreſt.

(M)

(M) Other Offences in the Foreſt.

Keeping of Dogs not expeditated.

EVERY Offence, which tends to the Deſtruction of the Foreſt, or the Vert or Veniſon of the Foreſt, or is a Breach of the Laws of the Foreſt, will be a Nuſance to the Foreſt. *Manw.* 266.

And therefore, not only the hunting, or killing of Beaſts of the Foreſt which deſtroys the Veniſon, *de quo vide ante*, (H. 1, *&c.*) and Waſte, Purpreſture, or Aſſart, which deſtroys the *Vert (de quo Vide Ante*, L. *and Poſt*, N. 1, &c.) but any Thing, which tends to ſuch Deſtruction, and is prohibited by the Laws of the Foreſt, will be a Nuſance to the Foreſt. *Manw.* 267.

And therefore, by *Ch. de For.* 9 *H.* 3. 6. he whoſe Dog is not found expeditated, ſhall be amerced 3*s.* and Inquiry or View for lawing of Dogs within the Foreſt ſhall be made, when the Regard is made, *viz.* every third Year, by the View and Teſtimony of honeſt Men, and not otherwiſe.

And ſuch lawing ſhall be done by the Aſſize commonly uſed, *viz.* three Claws of the Forefoot ſhall be cut off by the Skin. And, *ex pede*, this is called expeditating. *Manw.* 265, 255.

And therefore, without the King's Grant, no Perſon can keep a Maſtiff within a Foreſt, unleſs he be expeditated; for the Word *Dog*, is intended of a Maſtiff only. *Manw.* 249.

Nor any Dog of the Maſtiff Kind. *Manw.* 251.

Nor can he preſcribe for it, without ſhewing the King's Charter. *Manw.* 246.

Nor any Dog for hunting. *Semb. Skin.* 100.

So, without the King's Grant, none ſhall keep a Greyhound or Spaniel within a Foreſt, tho' it be expeditated. *Manw.* 246.

And the Patentee cannot preſcribe to be quit of lawing Dogs, as an Abbot, *&c.* was quit. *Jon.* 271.

The Regardors muſt preſent every Maſtiff not expeditated, and the Owner, at the Court of Attachments, and by the Judgment of the Court every one ſhall be expeditated, and the Owner ſhall pay 3*s.* by which is meant that it ſhall be done *per Viſum proborum hominum*, as *Charta de For.* 6. directs. *Manw.* 253, 254.

And it ſhall be done by an Officer appointed by the Court. *Manw.* 254.

Who with a Mallet and Chiſſel ſmites off at once the three Claws of the Dog's Forefoot. *Manw.* 255, 256.

And after ſuch Preſentment (and not before,) Proceſs ſhall be awarded for ſuch Amerciament. *Manw.* 260.

And a Perſon cannot diſclaim the Dog, without ſaying, who is the Owner. *Manw.* 262.

But an Inhabitant within a Foreſt may keep a Maſtiff being expeditated, for the Safety of his Houſe and Goods. *Manw.* 243.

And if ſuch Maſtiff be *inventus ſuper Feram, &c. ipſe cujus eſt quietus erit de facto* By the Statute *de Aſſ. & Conſ. Foreſtæ*, 6 *Ed.* 1. 9. *Manw.* 243.

So a little Dog *unde Nihil eſt Periculi* may be kept, tho' he be not expeditated. *Man.* 245.

So, by a ſpecial Grant of the King, a Maſtiff may be kept within a Foreſt, tho' he be not expeditated. *Manw.* 246, 247.

So alſo a Greyhound, and Spaniel, *&c.* *Manw.* 246.

So by *Ch. de For.* 6. Lawing of Dogs ſhall not be done, but in Places where it hath been accuſtomed ſince the Coronation of *H.* 2.

And therefore, a Maſtiff need not be expeditated within a Chaſe. *Manw.* 257.

Nor within any Place diſafforeſted, after the Diſafforeſtation. *Manw.* 258.

So, if a Man be found to have ſeveral Dogs not expeditated, he ſhall be amerced only 3*s.* *Manw.* 263, 4.

So

So a Man ſhall not be amerced, who is not the Owner of the Dog, tho' he took the Dog by Tort, or by Bailment of *B.* who lives out of the Foreſt, and keeps him in the Foreſt; for *B.* ſhall be amerced for it. *Manw.* 263.

(N) Waſte.

(N. 1.) In cutting of *Vert*, or Covert.

(N. 1.) What ſhall be *Vert*.

BY the *St.* 6 *Ed.* 1. *Raſt. Foreſt.* 21. *Vert* ſhall be reputed *Omnis Arbor fructum portans vel non, & antiqua Fraxinus in Foreſtâ & arabili.*

And therefore, all Wood and Underwood within the Foreſt is eſteemed *Vert.* *Manw.* 120.

Hault Boys, which is called *Overt Vert*, comprehends all great Wood. *Manw.* 121.

Antient Aſhes, and Holly Trees. *Ibid.*

South (*pro Soubs*) *Boys*, which is called *Nether Vert*, comprehends all Underwood. *Ibid.*

All Buſhes, Thorns, Gorſe, *&c.* *Ibid.*

So all *Hault Boys*, or *South* (*pro Soubs*) *Boys*, within any Demeſne Wood of the King is *Special Vert.* *Manw.* 124.

So, in the Demeſne of a Subject, all Wood which bears Fruit. *Manw.* 126.

If any cut the *Vert* of the Foreſt within his own Land without Licence, it will be Waſte. *Manw.* 147.

(N. 2.) When cutting it is reſtrained.

By *Ch. de For. Regis Canuti* 28. *Boſco & Subboſco noſtro ſine Licentia Primariorum Foreſtæ nemo manum apponat.*

And if any offend in cutting of *Vert* within the Demeſnes of the King, the Cart and Horſes which carry it away are forfeited, and he ſhall be fined to the Value of the Wood cut. *Manw.* 124.

Per Leges de For. Regis Canuti, Siquis ilicem aut arborem, quæ victum feris ſuppeditat, ſciderit, præter Fractionem Regalis Chaceæ emendet Regi 20 *s.* And by *Charta de For.* 4. ſhall anſwer for Waſte, Purpreſture, and Aſſart hereafter made.

Per Ordin. de For. 6 *Ed.* 1. *Raſt. Foreſt* 21. *Siquis extra Dominicum infra Regardam* (*viz.* out of the Demeſne of the King and within the Precinct in the Foreſt,) *proſternit quercum, ſine Viſu aut Liberatione Foreſtarii, aut Viridarii debet attachiari per* 4 *Plegios, & per Viſum Viridariorum quercus appreciari.*

And therefore, a Man cannot cut Wood in his own Land within the Foreſt, or deſtroy the Coverts, without a View of the Foreſter, and Licence of the Juſtices in *Eyre.* *Manw.* 136.

If it be for Fire, it may be cut by View of the Foreſters, or Verderers. *Jon.* 268.

And this is implied by the *St.* 1 *Ed.* 3. 2. which enacts, That any, having Woods of his own in the Foreſt, may take the ſame, without being attached by an Officer of the Foreſt, ſo as he do it by the View of the Foreſters.

Tho' it eſcheated to the King, and be then held by the King's Patent; for the Patentee ſhall be ſubject to the Laws of the Foreſt. *Manw.* 136.

So he cannot give, or ſell his Wood within the Foreſt to another, without a Warrant from the King, or the Juſtices in *Eyre.* *Manw.* 137. And this *per Ord. de For.* 6 *Ed.* 1. 6. *Jon.* 270.

Or make Charcoal of the Wood there. *Manw.* 138.

So he cannot cut for Sale, without a Writ of *Ad quod Dampnum.* *Jon.* 268.

So a Licence by the Juſtice in *Eyre* ought to be *ſedente Curia*, or after a Writ of *ad quod Dampnum.* *Jon.* 269.

And if the Officer gives a Certificate, that the Cutting was no Prejudice, when it was a Prejudice, he ſhall be fined. *Jon.* 274.

So *per Ord. de For.* 6 *Ed.* 1. 6. *Liberatio Houſebote & Haybote fiat prout Boſcus pati poteſt:* And therefore, he cannot take it without the Delivery of the Foreſters. *Manw.* 137.

So he cannot make a Woodward, without a Preſcription for it. *Manw.* 138.

(N. 3.) When not.

But in a Foreſt and Chaſe in the Hands of a common Perſon, the Owner of the Soil may cut his Wood, without the Licence or View of the Foreſter, if ſufficient *Vert* be left. *R. Manw.* 81. *R.* 12 *Co.* 22. 2 *Cro.* 155.

So, in a Free Chaſe of the King. *R.* 12 *Co.* 22.

So, by Preſcription, a Man may cut Timber in his own Wood within the King's Foreſt, without the View of the Foreſter. *Manw.* 82. 135. *in Marg.* 12 *Co.* 22, 23. *Dub. Jon.* 275, 6. *R. Cont. Jon.* 290. *Vide Preſcription,* (F. 3.)

So he may take Houſebote, Haybote by the View of the Foreſter, without a Licence of the Juſtice in *Eyre*. *Manw.* 137, 144.

So an Officer of the Foreſt may preſcribe to have ſo much Wood, to be aſſigned by the Woodward within the Foreſt, for his Fuel. *Semb. Sav.* 5.

So, upon Requeſt to the Juſtice in *Eyre*, an *ad quod Dampnum* goes to inquire what Damage the Cutting will be, and the Quantity and Value of the Wood, and upon the Return of the Writ to the *Chancery*, or to the Juſtice in *Eyre*, he ſhall give a Licence to the Owner to cut, upon a Recognizance to make Fences for ſeven Years. *Manw.* 140.

So the Juſtice in *Eyre*, without an *ad quod Dampnum*, may write by his Warrant to the Officers of the Foreſt, and upon their Certificate that it is no Damage, grant a Licence to the Owner to cut his Wood. *Manw.* 142.

Vide Poſt, (N. 8,)

(N. 4.) What other Privileges the Owner ſhall have.

So by *Ch. de For.* 9 *H.* 3. 13. Every Freeman ſhall have in his own Wood Ayryes of Hawks, *&c.* and the Honey there found.

By *Ch. de For.* 9. Every Freeman may take Agiſtment in his own Woods in our Foreſt, and his Pawnage; and may drive his Swine through our Demeſne Woods to agiſt in his own or elſewhere, and ſhall not loſe them if they tarry one Night in the Foreſt. *Vide Poſt,* (O. 1, &c.)

By *Ch. de For.* 12. He may make in his own Wood, Land, or Water in the Foreſt, Mills, Springs, Pool, Marle Pits, Dikes, or Arable Ground without incloſing it, ſo as it be not to the Annoyance of his Neighbours.

(N. 5.) Privilege of the King in the Wood, or Land of a Stranger.

The King, or the Owner of a Foreſt, by his Officers, may cut Brouſe Wood for the Deer in Winter, within the Wood of any *infra Regardam Foreſtæ*. *Manw.* 138.

(N. 6.) In his own Wood, or Land.

So the King, in his Wood, or Lands within his own Foreſt, Chaſe, or Park cannot, by Commiſſion of the Treaſurer, or the *Exchequer*, ſell any Coppice or Wood, (except Windfalls, Roots, and dead Trees,) without the Licence of the Juſtice in *Eyre*. *R. Manw.* 145.

Nor can cut dead Trees, or carry away Windfalls, *&c.* except at the proper Seaſon by the View of the Officers of the Game. *Ibid.*

And therefore, before Sale of the King's Wood there ſhall be an *ad quod Dampnum* to the Warden, or Juſtice in *Eyre*, and returned by him. *Manw.* 146.

So, before a Warrant to cut for Repairs, there muſt be a View and Eſtimate of the *Quantum*. *Jon.* 269.

So one may ſell by the Command of the King, without a regular Licence for buying Hay for the Deer. *Jon.* 279.

So there ſhall be no Sale of the King's Wood by the Juſtice in *Eyre*, without a Commiſſion of the Treaſurer and *Exchequer*. *R. Manw.* 143, 146.

Nor ſhall Wood be cut by the Juſtice in *Eyre*, or other Officers for Repair of Lodges, Pales, *&c.* (above two or three Timber Trees *per Annum* in any Foreſt, *&c.*) without Allowance of the Treaſurer. *Manw.* 146. *Jon.* 279.

So the Juſtice in *Eyre*, or other Officer of the Foreſt, cannot claim Dotards, Windfalls, *&c.* as a Fee by Preſcription; for it was Part of the King's Inheritance, and ought to be ſold by Commiſſion for the King's Profit. *R. Manw.* 144.

So a Grantee or Leſſee of the Herbage or Pannage of a Park, *&c.* can take only the Surplus (if there be any,) after the Deer are ſupplied. *Manw.* 144.

But the King's Farmer or Copyholder, may take Timber according to the Covenants of his Leaſe, or the Cuſtom, by the View only of the Foreſter. *Ibid.*

And the King may grant Eſtovers in a Foreſt, without the View of the Foreſter. *Manw.* 144. *in Marg.*

(N. 7.) Incloſing of Wood.

By the Common Law, the Incloſure of all Wood, cut by the Owner within a Foreſt, ought to be made only for three Years, *cum parva foſſa & baſſa haia ſecundam Aſſiſam Foreſtæ. Manw.* 82. 8 *Co.* 138. *a. R.* 2 *Cro.* 156. *Jon.* 278.

And if a deep Ditch or high Hedge be made, and continues for forty Years, if it were not ſo before, it may be deſtroyed and pulled down. *R.* 2 *Cro.* 156.

(N. 8.) Waſte in the Deſtruction of the *Vert*.

If the cutting of *Vert* or Covert within a Foreſt be Waſte, the Deſtruction of it will be more ſtrongly ſo: And therefore, if a Man cut his Wood within the Foreſt by Licence, *&c.* and afterwards do not incloſe the Wood with a ſufficient Fence, whereby it be deſtroyed by Beaſts, this Deſtruction of the Wood will be Waſte. *Manw.* 149.

So, if he cut by Licence, but at an unſeaſonable Time, whereby the Wood will never grow afterwards. *Ibid.*

(N. 9.) In aſſarting of his Land.

So it will be more heinous Waſte, if a Man eradicate his Wood, and convert his Land to Tillage, without Licence; which Waſte is called *Aſſart*, from the Word *Eſſart*, which in *French* ſignifies to grub up. *Manw.* 155. 4 *Inſt.* 306, 307.

So, if a Man convert his Wood, or Land covered with Broom, Fern, Heath, or other Covert, to Paſture and Tillage, it will be an *Aſſart*. *Manw.* 157.

So, if he convert Meadow or Paſture, within a Foreſt ſurrounded with Coverts, to Arable, it will be an *Aſſart*. *Ibid.*

So a Grant to be quit of *Aſſarts*, ſhall be only for thoſe before committed. *Jon.* 271, 289.

(N. 10.) How Waſte ſhall be puniſhed.

If a Man commit Waſte within a Foreſt by cutting, or deſtroying of the *Vert* without Licence, the Wood or the Land where the Waſte is done ſhall be ſeized into the Hands of the King, till the Owner replevy it, and make Fine to the King. *Manw.* 151.

So, if he aſſart any Wood or Land. *Manw.* 157.

Tho' the Owner had an Eſtate of Inheritance in it.

Tho' he die before Preſentment of the Waſte; for the Wood, or other Land ſhall be ſeized, *&c.* till the Heir replevy it, and make Fine. *Manw.* 151, 158.

And if the Owner or his Heir will not pay his Fine, the Land remains in the King's Hands for ever. *Manw.* 152, 158.

The Fine ſhall be at the Pleaſure of the King, or the Juſtice in *Eyre*. *Ibid.*

But

But it is uſually proportioned to the Offence. *Manw.* 158.

And therefore, a Preſentment of Waſte in a Foreſt ought to ſhew the Nature of the Waſte, and by whom done, the Quantity and Value of the Land, and where it lies. *Manw.* 152, 158.

So in Lieu of a Fine he may compound for an annual Rent to the King, which ought to be entred upon the Records of the Foreſt. *Manw.* 160.

So, over and above the Fine, he ſhall pay the Value of the Corn growing. *Jon.* 269.

By the *St. Ord. de For.* 6 *Ed.* 1. 4. *Siquis inventus fuerit in Dominico Regis aſſertando, &c. Corpus debet pratinus retineri: Si extra Dominicum infra Rewardum, debet poni per* 6 *plegios; ſi alias, debet duplicare plegios; ſi tertio, Corpus debet retineri.*

And therefore, every one, who is guilty of *Aſſart*, and is found in the Manner, if it be in the Demeſne of the King, ſhall be impriſoned till he pay his Fine. *Manw.* 159, 163.

If it be in his own Land, *&c.* (and not the King's) for the firſt and ſecond Offence, he ſhall find Sureties, and for the third, he ſhall be impriſoned till the Fine paid. *Ibid.*

If he be impriſoned, he ſhall be bailable only by the Juſtice in *Eyre*, or his Deputy. *Manw.* 159.

But the Land ſhall not be abſolutely forfeited for Waſte within a Foreſt. *Manw.*

So a Man ſhall not be taken by a Warrant of the Chief Juſtice of the Foreſt, unleſs he be indicted, or found in the Manner. *R. Carth.* 78.

And if Timber of the Foreſt be found in his Yard, this is not a finding in the Manner. *Per* 3 *Judg. Holt dub. Carth.* 79.

(O) Privilege within a Foreſt.

(O. 1.) By Agiſtment.

AGISTMENT is, when a Man agiſts, or drives Beaſts to depaſture the Herbage of a Wood, or Land within the Foreſt.

And by the *St. Ch. de For.* 9. Every one may agiſt his own Beaſts (except Sheep and Goats) in his own Wood or Land within the Foreſt, for a whole Year at his Pleaſure. *Vide Ante*, (N. 4.)

If he has an Eſtate in Fee, or Tail, for Life or Years, in his own Right, or in Right of another, he may do it by himſelf, or by his Servant or Agent. *Manw.* 193.

So every Inhabitant within a Foreſt for Hire may agiſt his Commonable Beaſts in the Demeſnes of the King within the Foreſt from fifteen Days before *Midſummer*, to fifteen Days before *Michaelmas*, *viz.* to *Holy Rood* Day, by Aſſent of the Verderors, Foreſters, and Agiſtors. *Manw.* 180, 183.

And therefore, by *Ch. de For.* 8. A Swanimote ſhall be holden fifteen Days before the *Feaſt of St. John the Baptiſt*, when the Agiſtors meet to fawn the Deer. *Manw.* 183.

And there ought to be a Commiſſion from the Juſtice in *Eyre* to the Agiſtors, *&c.* to make an Agiſtment, upon which they return what they do. *Manw.* 185.

But a Man cannot agiſt his own Land with Goats and Sheep, tho' the Words of *Ch. de For.* 9. are general; for that would be to the Baniſhment of the Beaſts of the Foreſt. *Manw.* 193.

So he cannot agiſt with the Beaſts of another.

If an Inhabitant of the Foreſt agiſt his Beaſts in the Demeſnes of the King without Licence, he ſhall be fined. *Manw.* 188.

A Foreigner, his Beaſts are forfeited. *Ibid.*

(O. 2.) By Pawnage.

So by *Ch. de For.* 9. Every one ſhall have Pawnage in his own Land, (*viz.* the Maſt of his Trees, with Swine) at his Pleaſure, except in Land adjoining to the Land or Wood of the King. *Manw.* 190.

And in his Land or Wood adjoining to the Land or Wood of the King, after the Demeſnes of the King are agiſted. *Manw.* 191.

And he may agiſt with another's Swine, after the King has agiſted his Demeſnes.

So every one, for Hire, with Aſſent of the Verderors, Foreſters, and Agiſtors, may have Pawnage in the Demeſnes of the King from fifteen Days before *Michaelmas* to forty Days after, *viz.* from *Holy Rood* Day to *St. Martin's*. *Manw.* 184.

But, *per Ordin. de For. Poſtquam Dominicæ Haiæ agiſtate ſunt, licitum erit ei, qui boſcum habet juxta Dominicum Boſcum, tempore Pannagii habere tot Porcos quot per Viſum, &c. Boſcus pati poſſit*, and not before. *Manw.* 191.

(O. 3.) By Common.

(O. 3.) When allowed.

So every Man, who has a Right of Common by Preſcription in the Lands of the King, or another within a Foreſt, ſhall have his Common for all Commonable Beaſts, notwithſtanding the Afforeſtation; for by *Ch. de For.* 1. The Afforeſtation ſhall be, *Salvâ Communiâ de Herbagio & aliis, illis qui prius habere conſueverunt*. Manw. 217.

And therefore, every Inhabitant within a Foreſt may preſcribe for Common within the Foreſt for his Commonable Beaſts *levant* and *couchant* upon his antient Tenement. *Manw.* 221. *Jon.* 283, 4.

So an Inhabitant of a Town may preſcribe for Common, for Commonable Beaſts *levant* and *couchant* within the ſame Town. *Manw.* 222.

So, by ſpecial Grant, a Man may have Common in a Foreſt for Beaſts not Commonable: As, for Geeſe, Goats, Sheep and Hogs. *Manw.* 220.

So he may preſcribe for Common there for Sheep. *Cont. Manw.* 220, 222. *Semb. Acc. Manw.* 227. *Acc.* 4 *Inſt.* 298. *R. Acc.* 3 *Bul.* 213. *R. Lut.* 81. *R.* 2 *Cro.* 155. *Acc. Poll.* 447. *Dub. Hard.* 87.

So he may have Common there *pour cauſe de Vicinage*. *Manw.* 221, 224.

So he may have Common there in Groſs, by ſpecial Grant. *Ibid.*

Common of Turbary.

So he may preſcribe for Common in a Foreſt, generally, without Exception of the Fence Month. *Lut.* 81. *R.* 3 *Lev.* 98, 127. *Poll.* 443.

(O 4.) When not.

But a Man ſhall not have Common in a Foreſt, without Charter or Preſcription, in reſpect of his Inhabitancy there. *Manw.* 227.

So, if the Inhabitants of a Town may preſcribe for Common for Commonable Beaſts *levant* and *couchant* in the ſame Town, an Inhabitant of an Houſe newly built in the ſame Town, being within the Foreſt, ſhall not have Common there; for ſuch Building is Purpreſture. *Manw.* 222.

So, regularly, a Man cannot preſcribe for Common within a Foreſt, for Beaſts not Commonable: As, for Geeſe, Goats, or Hogs. *Manw.* 220, 222.

Nor can he uſe Common there with the Beaſts of a Stranger. *Manw.* 223. *Jon.* 283.

Nor, within a Fence Month. *Jon.* 283.

So a Commoner ought not to ſur-charge the Foreſt. *Jon.* 282.

Nor, ſend his Beaſts with a Staff-heard, who attends them. *Ibid.*

So, by the Diſafforeſtation of the Land, the Common will be loſt. *R. Hard.* 438. *Hale Cont.* If the Land was not well put within the Foreſt at firſt.

[The Right of Common in the *New Foreſt* is abſolutely taken away in the incloſed Parts whilſt incloſed, and continued in the waſte Parts, except in Fence-Month, (fifteen Days before the fifteen Days after 24 *June*) and Winter-heyning

(from 11 *November* to 23 *April*) and Pannage is reſtrained to the Time between 14 *September* and 11 *November*; and this tho' the whole 6000 Acres is not incloſed. *Biddlecombe* v. *Kervell*, *H.* 1 *G.* 3. 2 *B. M.* 1117.]

(P) The Laws of the Foreſt.

THE Laws of the Foreſt differ from the Common Law. *Manw.* 486.

By *Ch. de For.* 9 *H.* 3. The Laws of the Foreſt are reduced to a Certainty, which were before arbitrary at the Will of the King. *Manw.* 487.

(Q) Officers of the Foreſt.

(Q. 1.) Juſtice in *Eyre*.

THE Chief Officer of the Foreſt is the Juſtice in *Eyre*. *Vide Juſtices*, (F.)

So all aſſociated with him are called, Capital Juſtices of the Foreſt.

So, if the King grant a Foreſt, without Power to make a Juſtice-Seat, it will be only a Chaſe. *R.* 2 *Bul.* 298. *Vide Ante*, (B.)

And in a *Quo Warranto* to have a Foreſt and Juſtice-Seat, if the Defendant claim the Foreſt, but diſclaim to have the Juſtice-Seat, there ſhall be Judgment againſt him. *R.* 2 *Bul.* 298.

(Q. 2.) Verderor.

In every Foreſt there are uſually four Verderors, ſo named *a Viridi*, or *Vert*. 4 *Inſt.* 317. *Manw.* 403.

The Verderor is a Judicial Officer of the Foreſt, ſworn to maintain the Laws of the Foreſt, and to view, receive, and inrol the Attachments, and Preſentments of all Treſpaſſes within the Foreſt, of *Vert* and Veniſon. 4 *Inſt.* 292. *Manw.* 403.

And all the Rolls ought to be in Parchment, not in Paper. *Jon.* 267.

And ought to be ſealed before Delivery; but one Seal with Aſſent of all is ſufficient. *Jon.* 268.

(Q. 3.) Regarder.)

The Regarder is an Officer of the Foreſt, ſworn to make Regard there as uſual, to view, and inquire of all Offences within the Foreſt in *Vert* or Veniſon, and of Concealments, or Defaults of the Foreſters, or other Officers of the Foreſt. *Manw.* 409.

And he ſhall be made by the King's Patent, or by the Chief Juſtice in *Eyre*, or, upon a Writ to the Sheriff to make a Regard of the Foreſt, he ſhall be choſen in the County. *Manw.* 409. *Jon.* 266.

If the Preſentments by the Regarders are inſufficient, they ſhall be fined; for by the Articles ſent to them with the Writ of Summons, they are directed what ought to be preſented, and in what Manner. *Jon.* 268, 274, 5.

Q. 4.) Foreſter.

The Foreſter is an Officer ſworn to preſerve the *Vert* and Veniſon within his Walk, to guard the *Vert* and Veniſon there, not to conceal but to attach all Offenders, and to preſent the Offences and Attachments at the next Court of Attachments, or Swanimote. *Manw.* 428.

And to ride with the King, and conduct him in his Hunting. *Jon.* 278.

To take Care of the Lawing of the Dogs. *Jon.* 288.

(Q. 5.)

(Q. 5.) Woodward.

A Subject, who has Land within a Foreſt, according to Uſage, ought to have a Woodward, and if he does not appear at the Juſtice-Seat, the Wood ſhall be ſeized into the King's Hands, till he make Fine and replevy it, and if he do not replevy it within a Year, it ſhall remain in the King's Hands for ever. *Jon.* 266.

If Wood, Part of the King's Demeſne within a Foreſt, be demiſed to another for Years, the Leſſee ſhall find a Woodward; and if he does not appear, the Wood and Office ſhall be ſeized. *Ibid.*

And after Seizure, no Claim of the Owner ſhall be heard till he replevy the Wood. *Jon.* 267, 268.

(Q. 6.) Agiſtor.

The Agiſtor is an Officer within the Foreſt, who ought to preſent Treſpaſſes made by Beaſts in the Foreſt. *Jon.* 280.

If the ſame Perſon has ſeveral Offices in the Foreſt, thoſe may be ſeized *quæ intendere non poſſit*. *Jon.* 266.

So if a Town, *&c.* has a Patent to be quit of Service in a Foreſt, it muſt ſerve till its Claim be allowed by the Juſtices in *Eyre*. *Jon.* 267.

If any preſent what does not belong to his Office he ſhall be fined. *Jon.* 280.

(R.) The Courts of the Foreſt.

(R. 1.) The Juſtice-Seat.

AT the Juſtice-Seat, after the Commiſſion read, the Officers of the Foreſt, Freeholders, and all who ought to appear, are demanded, and then a Jury out of the Freeholders is ſworn, and a Charge given to them. *Manw.* 509. *Vide Juſtices,* (F.)

But the Court may adjourn to another Place in the County before Demand, and may be demanded there. *Jon.* 347.

All Offences, which concern *Vert* or Veniſon within the Foreſt, are inquirable at the Juſtice-Seat, and not elſewhere out of the Foreſt. *Jon.* 267.

And therefore, all Rolls of Offences preſented at a Court of Attachment, or indicted at a Court of Swanimote under the Seal of the Verderors, ought to be preſented at the Juſtice-Seat.

And the Matter of Fact contained in ſuch Rolls, whereof any one is convicted by the ſame Rolls, cannot be traverſed nor diſcharged, except by Matter ſubſequent conſiſtent with the Fact, which may be pleaded thereto at the Juſtice-Seat; as a Pardon, a Releaſe, *&c.* *R. Jon.* 347.

So, if the Roll contain, that *A.* was indicted and convicted before the Verderors at the Swanimote of cutting Trees within the Foreſt, *A.* ſhall plead at the Juſtice-Seat, a Grant of Lands within the Foreſt, upon which the Trees grew. *Jon.* 347.

Otherwiſe, if the Grant does not mention the Trees to be within the Foreſt. *Ibid.*

So the Jury, charged at the Juſtice-Seat, ought to preſent all Offences committed within the Foreſt ſince the laſt Juſtice-Seat, and how they have been proſecuted, or puniſhed by the Officers of the Foreſt. *Manw.* 509.

As, the Cutting of Trees, Building of Houſes to the Nuſance of the Foreſt, *&c.* *Jon.* 348.

And the Reeve, and four Men of the Towns ought to attend till Preſentment made. *Jon.* 297.

So the Juſtice-Seat may fine for contemptuous Words. *Jon.* 274.

Or, for Words at the Swanimote before the Juſtice-Seat. *Ibid.*

After Preſentment, the Party may confeſs and ſubmit to be fined. *Jon.* 268.

And he ought to plead preſently, for the Proceſs is *de Horâ in Horam*. *Jon.* 268.

If there be a Claim at the Juſtice-Seat of any Privilege or Exemption, after the Charter read, the Court allows or diſallows, without a Demurrer, &c. by the Attorney-General. *Jon.* 272.

Or the Party himſelf may diſavow. *Jon.* 288.

So, if a Claim be made and not proſecuted, it ſhall be diſallowed. *Jon.* 297.

If the Party proſecute his Claim, he muſt make a good Title to it. *Jon.* 294.

If a Judgment at the Juſtice-ſeat be erroneous, a Writ of Error lies in *B. R.*

So, if the Juſtice-ſeat allows an unlawful Claim, there may be Redreſs, if the Record be removed into *B. R.* by a *Certiorari*, called a *Venire facias Recordum*. *Manw.* 526. 4 *Inſt.* 294.

So, if it diſallows a Claim, which ought to be allowed, there ſhall be a Writ *de Libertatibus allocandis* directed to the Juſtice of the Foreſt.

(R. 2.) The Swanimote Court.

The Swanimote is derived from *Mote*, which ſignifies a Court, and *Swaine*, which ſignifies a Freeman; and therefore imports a Court of Freeholders within a Foreſt. 4 *Inſt.* *Manw.* 462.

In this Court the Verderors are the Judges. *Manw.* 462.

And tho' the Warden, or his Deputy, or Lieutenant ſometimes ſit in Court, yet they are not the Judges there. *Manw.* 462, 463.

By the *St. Ch. de For.* 8. The Swanimote Court ſhall be held only *ter in Anno, viz.* fifteen Days before *Michaelmas*, about the Feaſt of *St. Martin* in Winter, and in the Beginning of fifteen Days before the Feaſt of *St. John the Baptiſt*.

And all the Officers of the Foreſt, and Freeholders within the Foreſt, ought to appear there. *Manw.* 467.

If any one does not appear, his Default ſhall be inrolled, and he ſhall be amerced upon the Oath of the Officers by the Verderors and Steward of the Foreſt; and the Amerciament ſhall be affeered, and afterwards eſtreated by the Verderors to the Chief Warden or his Deputy, or to the Beadle of the Foreſt, to be levied by Diſtreſs; or the Verderors may certify the Default to the Juſtices of the Foreſt, who ſhall make a Writ to the Warden or Sheriff to levy it, or may eſtreat it in the *Exchequer*, and Proceſs ſhall iſſue to levy it. *Manw.* 469.

The Diſtreſs ſhall be for the Amerciament for his Default, and alſo that he appear at the next Swanimote. *Manw.* 470.

It may be upon his Goods or Lands within the Foreſt, or Lands out of the Foreſt, which belong to him as an Officer of the Foreſt. *Manw.* 471.

If it be returned by the Chief Warden or his Lieutenant, *that he has no Lands or Goods, whereby he may be diſtrained*, there ſhall be a *Teſtatum Diſtringas* by the Juſtices of the Foreſt to the Sheriff to diſtrain him within his County. *Manw.* 471.

CHATTELS.

Goods and Chattels.

Vide Biens, per Totum.—Chancery, (4 W. 5.)—*Prohibition*, (F. 5.—*Treſpaſs*, (A. 1.—B. 4.)

Chattels Real.

Vide Biens, (A. 1.)—*Chancery*, (4 G. 2. 5.)

Chattels Perſonal.

Vide Biens, (A. 2.)—*Chancery*, (4 G. 1.)

CHESTER.

County Palatine of Cheſter.

Vide Franchiſes, (D. 4, &c.)

Chamberlain of Cheſter.

Vide Franchiſes, (D. 5.)

Chief Juſtice of Cheſter.

Vide Franchiſes, (D. 6.)

CHIMIN.

(A) High-way.

(A. 1.) What ſhall be.

WHAT ſhall be ſaid to be a private Way, and what an High-way, depends upon Common Reputation. 1 *Vent.* 189. *Vide Poſt*, (D. 1, &c.)

A Way to a Market, a great Road, *&c.* common to all Paſſengers, is a High-way. *Per Hale*, 1 *Vent.* 189.

A navigable River is in the Nature of a High-way.

And if the Water alters its Courſe, the Way alters. *Per Thorp*, 22 *Aſſ.* 93.

If a High-way lies in an open Field, and Paſſengers uſe to turn out of the great Track when it is foundrous, theſe Outlets are Part of the High-way. *R.* 1 *Rol.* 390. *l.* 10.

And if ſown with Grain, Paſſengers may ride upon the Corn. *Ibid.*

But if a Man aſſigns a Way, becauſe the High-way is foundrous, out of his own Ground, that does not become the High-way, unleſs it be done by the King's Licence upon an *Ad quod Damnum*. R. Cro. Car. 267.

Tho' an Inquiſition upon an *Ad quod Damnum* finds, that it is no Damage to the King to grant a Licence; if the Licence be not granted. *R. Cro. Car.* 267.

(A. 2.) To whom the Soil and Profits belong.

The King has only Paſſage in the High-way for him and his Subjects. 1 *Rol.* 392. *l.* 3. *Bro. Chimin* 9, 10.

But the Freehold and Soil belong to the Lord of the Leet. 1 *Rol.* 392. *l.* 5.

And he may have an Action for digging the Ground there. 1 *Rol.* 392. *l.* 8.

Yet the Trees in a High-way generally belong to the Proprietors of the Soil, *ex utraque parte*. *R.* 1 *Rol.* 392. *l.* 13. *Bro. Chimin* 15. 1 *Brownl.* 42.

But the Lord of the Leet may preſcribe for the Trees there.

And by ſome it is ſaid, that the Trees belong to him. *Per Cur.* 27 *H.* 6. 8. *a.*

So the Lord of a Rape may preſcribe for all the Trees in the High-way within his Rape, tho' he be not Lord of the Manor. *R.* 1 *Rol.* 392. *l.* 15.

If a Man be Owner of a Close by which a High-way lies, the Trees belong to him. *Bro. Chimin* 9.

[If a Man sets out a Highway, yet the Property of the Soil remains in him, and he may maintain Trespass for resting the End of a Bridge on it. *Lade* v. *Shepherd*, *H.* 8 *G.* 2. *Str.* 1004.]

(A. 3.) How it shall be used.

If a Carrier carries an unreasonable Weight with an unusual Number of Horses, it will be a Nusance to the High-way, by the Common Law. *R. Mar. pl.* 210.

So, if a Man erects a Gate across a High-way, it will be a Nusance.

Tho' it be not locked, but opens and shuts freely. *Per* 3 *J. Cro. Cont. Cro. Car.* 184.

Or, if he puts his Wood-stack in the Street before his House, according to the antient Usage in the Town, and leaves sufficient Passage for Travellers. *R.* 2 *Cro.* 446.

(A. 4.) How it shall be repaired.

If a High-way wants Repair, the Parish of common Right ought to repair it. *Mar. pl.* 62. 1 *Vent.* 90. *per Hale*, 1 *Vent.* 183, 189.

[If there is a Road thro' common Fields from *A.* to *B.* an Act of Parliament for incloſing, *&c.* and the Commissioners direct that there shall be a Road from *A.* to *B.* thro' the Allotment of *C. D.* who incloses the Road on both Sides, he is not bound to repair, but the Parish remains liable. *Rex* v. *Flecknow*, *H.* 31 *G.* 2. 1 *B. M.* 461.]

And therefore an Indictment against any Persons of the Parish, severally, shall be quashed. *Mar. pl.* 71.

[If a Parish is indicted, it must be laid, that the Road is within the Parish, or that it is obliged to Repair. *Rex* v. *Allsaints*, *P.* 8 *G.* 2. *B. R. H.* 105.]

[The Breadth of the Road should appear, that the Court may set a proper Fine. *Ibid.*]

[If a *Township* is indicted for not repairing, it must be averred that Time out of Mind they have repaired. *Rex* v. *Marton*, *T.* 11 *&* 12 *G.* 2. *Andr.* 276.]

[The Presentment of the Jury must say that the Way is out of Repair. *Ibid.*]

[If the Indictment is for not *Paving*, it is bad; they are not bound to *Pave*, but to Repair. *Ibid.*]

[If a Parish lies in two Counties *A.* and *B.* and the Place out of Repair in *A.* the Inhabitants of that Part of the Parish which lies in *A.* must be indicted. and not the whole Parish. *R.* v. *Weston under Penyard*. *H.* 10 *G.* 3. 4 *B. M.* 2507.]

[Common Highway is a good Description, without saying Foot, Horse, or Cartway; it is a Highway for all Things. *Rex* v. *Hatfield*, *M.* 10 *G.* 2. *B. R. H.* 315.]

[Indictment setting forth a Highway leading from the Hamlet of *A.* in the Parish of *B.* to *C.* is good; and a certain Part of it in the Parish of *A.* aforesaid, leading from *A.* House in said Hamlet of *A.* to a Place called, *&c.* containing, *&c.* is a good Description of the Part out of Repair. *Rex* x. *Harrow*, *P.* 7 *G.* 3. 4 *B. M.* 2090.]

And an Agreement with another, that he shall repair, does not exempt the Parish. 1 *Vent.* 90, 189.

So the King's Grant does not exempt the Parishioners. *R.* 3 *Mod.* 96.

But a Man may be bound by Tenure to the Repair of an High-way. 2 *Sand.* 161.

And the Lien continues, tho' he lays his Land open to the High-way. *Per Keeling*, 2 *Sand.* 161.

[In an Indictment against a Person obliged to Repair by Tenure, *ratione Tenuræ* is sufficient, without *suæ*; for it implies such Tenure as makes him chargeable. *Rex* v. *Corrock*, *T.* 5 *G.* *Str.* 187.]

[By

[By *Stat.* 13 *G.* 3. *c.* 78. *ff.* 23. Surveyor ſhall inform two Juſtices, on Oath, what Roads are to be repaired by Tenure, *&c.* and they ſhall limit a Time for repairing them; if not done, they ſhall preſent it at Quarter Seſſions, who may order Proſecution at the general Expence of the Limit.]

[By *Stat.* 13 *G.* 3. *c.* 84. *ff.* 62. Turnpike Truſtees may agree with Perſons liable by Tenure to Repair, and make them reaſonable Allowance out of Tolls.]

So, by Preſcription, he may be bound to repair before his Houſe. *Mar. pl.* 71.

So, if a Man incloſes his Land in a common Field, *ex utraque parte* of an High-way, he ſhall be bound to the Repair by reaſon of the Encroachment, tho' he was not liable before. *R. Cro. Car.* 366. 1 *Rol.* 390. *l.* 30. *Jon.* 296.

And he ought to make a good Way, and maintain it for all Carriages as well as Horſes, at his own Charges; and it is not ſufficient that it is better than it was before. *R. Cro. Car.* 366.

So, if a Man incloſes againſt one Side of the Way only, where there was an antient Incloſure againſt the other, he ought to repair the Whole. *Per Keeling*, 1 *Sid.* 464.

But if a Man incloſes only one Side, where there was no Incloſure on the other, he ſhall be bound to maintain only a Moiety of the Way. 1 *Sid.* 464.

And if a Man, bound by Reaſon of Incloſure, lays his Land open again, he ſhall be excuſed. *Per Keeling*, 2 *Sand.* 160.

The Occupier is bound to the Repair of the High-way, not the Owner. *R.* 1 *Rol.* 390. *l.* 50.

[*B. R.* will grant Information againſt Inhabitants for not Repairing. *Rex* v. *Chedinfold*, *M.* 9 *G.* 2. *B. R. H.* 159.]

[So if they have repaired only with Faggots covered with Earth, when they might have had Stone two Miles off. *Ibid.*]

(B. 1.) Bridges in an High-way.

NONE can be compelled to make a Bridge in an High-way, Where there was not one before, unleſs by Act of Parliament. 2 *Inſt.* 701.

By the *St. Magna Charta*, 9 *H.* 3. 15. *Nulla Villa nec liber Homo diſtringatur facere Pontes, niſi qui de Jure facere conſuevit Temp. H.* 2.

So no one can erect a publick Bridge, without Licence, and an *Ad quod Damnum.* 1 *Sal.* 12.

So a County cannot change a Bridge from one Place to another, without an Act of Parliament. *R. Mod. Ca.* 307.

(B. 2.) How repaired.

(B. 2.) By whom.

By the Common Law no one was bound to the Repair of a Bridge, but by Tenure, or Preſcription. 2 *Inſt.* 700.

And if no one was bound by Tenure or Preſcription, it ſhould be repaired by the whole County. 2 *Inſt.* 701. 1 *Rol.* 368. *l.* 10. *Cro. Car.* 365.

Or, if it lies in a Franchiſe, by the whole Franchiſe. 2 *Inſt.* 701.

Or, if Part in one County or Franchiſe, and Part in another, each ought to repair as much as lies in it. 2 *Inſt.* 701. And this is now confirmed by *St.* 22 *H.* 8. 5.

Tho' the Seſſions charge only one Vill for the Whole. *R.* 1 *Sal.* 359.

But the Terre-tenants on each Side of an High-way are not bound to repair a Bridge in it. 2 *Inſt.* 700.

So, if a Man erects a publick Bridge, he is not bound to repair it. 2 *Inſt.* 701. 1 *Sal.* 359.

Nor, if he voluntarily repairs it once or twice; for that is only Evidence againſt him of a Lien by Preſcription, if he cannot ſhew who ought to repair. 2 *Inſt.* 700.

So an Uſage by the Anceſtor does not bind the Heir to repair, without a Lien and Aſſets. *Ibid.*

Yet a Corporation Sole or Aggregate may be bound to repair by Uſage and Preſcription, without more. 2 *Inſt.* 700.

And if a Man, bound by Tenure, ſells Part of the Land to one, and Part to another, each may be charged for the Whole. *Jon.* 273. *R.* 1 *Sal.* 358.

Tho' the Land bound comes afterwards to the King. *R.* 1 *Sal.* 358.

But he ſhall have a Writ *de onerando pro rata portione* againſt the other. 2 *Inſt.* 700. *Hard.* 131. *Dan.* 744.

So, if an Owner of a Mill make a Channel to it acroſs the High-way, and a Bridge there, which is uſed as a publick Bridge, he ſhall be bound to the Repair. *R.* 1 *Rol.* 368. *l.* 15. *Semb. Cro. Car.* 365.

Yet a private Bridge, which comes to the publick Benefit and Uſe, ſhall be repaired by the Publick. *Mod. Ca.* 307.

(B. 3.) Remedy for not Repairing.

(B. 3.) By the Common Law.

If a Bridge wants Repair, by the Common Law, the Remedy was by Preſentment before *B. R.* or Juſtices in *Eyre*. 2 *Inſt.* 701.

Or, before Commiſſioners of *Oyer and Terminer*. *Ibid.*

Or, before the Sheriff in his Tourn, or in the Leet. *Ibid.*

Or, before the Sheriff by Commiſſion; but this is now taken away by *St.* 28 *Ed.* 3. 9. 2 *Inſt.* 701. *F. N. B.* 127. *E.*

[The Seſſions impoſe a general Rate, and order the Officers to make a particular Aſſeſſment and collect it. *Rex* v. *Middleſex*, *H.* 11 *G.* 2. *Andr.* 101.]

[It is not neceſſary that the Order for an Aſſeſſment for the Repair of a County Bridge, ſhould ſet forth that it is preſented by whom the Bridge ſhould be repaired; for the only Matter neceſſary to be preſented is, that it is a public Bridge, and out of Repair. *Rex* v. *Middleſex*, *H.* 11. and *M.* 12 *G.* 2. *Andr.* 101, 285.]

Or there may be an Information exhibited for not repairing. 2 *Lev.* 112.

[Information in *B. R.* lies, notwithſtanding the *Stat.* 22 *H.* 8. 5. and 1 *Ann.* 18. *Rex.* v. *Inhab. Civ. Norwici*, *P.* 5 *G.* *Str.* 177.]

If it is a private Bridge to a Mill, *&c.* he that has the Paſſage may have a Writ *de ponte reparando*, againſt him who ought to repair it. *F. N. B.* 127. *D.* 2 *Inſt.* 701.

To an Information, or Indictment for not repairing, if the Defendant pleads *Not Guilty*, he ſhall give nothing in Evidence, but that the Bridge is repaired. *Per Holt.*

If he pleads, *that another ought to repair*, he ought to ſhew for what Cauſe; *viz. Ratione Tenuræ*, by Preſcription, *&c.* *Cro. Car.* 366.

And if he alledges, *that it is a new Bridge erected for the Benefit of a Mill*, it is not ſufficient to take by Proteſtation that it is not an antient Bridge; for that is the Subſtance, and ought to be directly anſwered. *R. Cro. Car.* 365.

If the Defendant alledges, *that* A. *ought to repair*, *&c.* abſque hoc *that the County ought*, the Attorney-General may reply, *that the County ought*, abſque hoc *that* A. *ought*, and tender Iſſue upon it. 2 *Lev.* 112.

(B. 4.) By Statute Law.

By the *St.* 22 *H.* 8. 5. confirmed by the *St.* 1 *Ann.* 18. Juſtices of Peace of a County, Franchiſe, *&c.* or four of them (1 *Quorum*) ſhall have Power at Quarter-Seſſions to hear and determine all Annoyances of Bridges broken in High-ways.

And to make ſuch Proceſs and Pains, on Preſentment before them, againſt thoſe, who ought to be charged with making or amending ſuch Bridges, as *B. R.* uſes to do, or as they ſhall deem neceſſary.

And if not known, who ſhould repair, *&c.* the Bridge, or ſuch Part as lies in a Town Corporate, ſhall be repaired by the Town, if out of the Corporation, by the County; and four Juſtices of Peace (one *Quorum*) may ſummon the Conſtables, or two Inhabitants of every Pariſh, and tax all the Inhabitants for the Repair, *&c.* and deliver a Roll of the Names and Sums to the Collectors of each Hundred, who may levy by Diſtreſs and Sale, *&c.*

And

And four Juſtices of Peace (one *Quorum*) may appoint two Surveyors to ſee the Repairs, to whom the Collectors ſhall pay the Money, and they ſhall all account to the Juſtices of Peace or four (one *Quorum*) at the Seſſions, and on Refuſal be committed without Bail till they do ſo, allowing reaſonable Charges.

And if the Perſon, who ought to repair, *&c.* dwell in another County, the Juſtices of Peace may ſend the ſame Proceſs, as if in the ſame County, which all Sheriffs, *&c.* ſhall execute.

And four Juſtices of Peace (one *Quorum*) may uſe the ſame Methods for Repair of 300 Feet at each End of Bridges when out of Repair, as for Repair of the Bridges.

By the *St.* 1 *Ann.* 18. Juſtices at the Quarter-Seſſions ſhall lay ſuch Sum on each Pariſh, as it hath uſually been aſſeſſed at, which ſhall be levied by the Conſtable or other Perſons as the Juſtices ſhall direct, and by them in ſix Days paid to the High Conſtables, and by them in ten Days to the Treaſurer, for Repair of the Bridges.

Such Aſſeſſment to be levied by Diſtreſs and Sale, on Non-payment in ten Days after Demand.

By the *St.* 22 *H.* 8. 5. Juſtices of Peace have no Authority, except of publick Bridges, not of private. 2 *Inſt.* 701.

Juſtices of Peace of the County have no Cogniſance of the Repair of Bridges within a Franchiſe, Borough, or City, if there are four Juſtices there (one *Quorum.*) 2 *Inſt.* 702.

But if there are not ſo many Juſtices of Peace in the Franchiſe, then the Juſtices of the County ſhall enquire of the Bridges there, if the Franchiſe be not a County by itſelf. *Ibid.*

And if it be a County by itſelf, then no Remedy but by Common Law. *Ibid.*

Juſtices of Peace ſhall have Juriſdiction of a common Bridge in a common Street, as a Nuſance, tho' it be not in an High-way. 1 *Sal.* 359.

If it be known, who ought to repair any Bridge, by the *St.* 22 *H.* 8. 5. the Juſtices of Peace ſhall iſſue the ſame Proceſs, as the Juſtices of *B. R.* 2 *Inſt.* 702.

And ſo, for re-building, if neceſſary, as well as repairing. *Ibid.*

If it be not known, who ought to repair, it is well, for the Security of the Juſtices of Peace, that the Grand Inqueſt preſent the Bridge in Decay, *&c.* & *quod neſcitur qui, &c.* 2 *Inſt.* 703.

If it be not known, who ought to repair, it ſhall be at the Charge of the County, *&c.* 1 *Rol.* 368. *l.* 10. *Vide Ante,* (B. 2.)

And this Act of 22 *H.* 8. 5. ought to be executed by four Juſtices (one *Quorum,*) or more. 2 *Inſt.* 703.

And it is good to do it by more, otherwiſe if one dies, or is put out of the Commiſſion, the three others have no other Authority to proceed. *Ibid.*

It is ſafe, that all Proceedings of the Juſtices of Peace upon this Statute be at the General Seſſions of the Peace. 2 *Inſt.* 705.

The Juſtices of Peace cannot tax, without Aſſent of the Conſtables, or Inhabitants. 2 *Inſt.* 704.

And therefore, they ought at the General Seſſions, where the Conſtables are preſent, to call them, or by Warrant ſummon them, or two Inhabitants, at a certain Place and Time for that Purpoſe. 2 *Inſt.* 703. *in Marg.*

The Tax ſhall not be impoſed upon the Pariſh in general, for then any Inhabitant might be diſtrained for the Whole, but upon each Inhabitant by himſelf. 2 *Inſt.* 704.

And here all Privileges and Exemptions, tho' by Parliament, are taken away. *Ibid.*

Every Houſeholder is an Inhabitant, but not a Servant, *&c.* tho' he has a perſonal Reſidence. 2 *Inſt.* 703.

Every one who has an Houſe and Servants there, tho' he reſides in another County. *Ibid.*

So a Man dwelling in another County, who occupies Land there. 2 *Inſt.* 702.

So a Corporation, which occupies Land in another County, is an Inhabitant there. 2 *Inſt.* 703.

So, an Infant, who has an Houſe, or holds Land there. 2 *Inſt.* 703.

So, a Man, who holds Land there in Right of his Wife. *Ibid.*

The Collector of every Hundred ſhall have a Roll indented, under the Seal of four Juſtices of Peace. 2 *Inſt.* 704.

The Collector may diſtrain for the Tax, upon the Land or Goods of the Party, at any Place within the Hundred. 2 *Inſt.* 705.

If the Tax be not paid upon Demand, it is a Refuſal, tho' it was not expreſly denied. *Ibid.*

One of the Collectors, with the Aſſent of the other, may diſtrain and ſell; for that is the Diſtreſs of both. *Ibid.*

The Surpluſage upon a Sale ſhall be returned to the Owner. *Ibid.*

None can be compelled to make a new Bridge, where there was not any before, except by Act of Parliament. 2 *Inſt.* 701.

[By 12 *G.* 2. *c.* 29. *ff.* 13. no Part of the County Rate ſhall be applied to repair Bridges, but on Preſentment of the Grand Jury.]

[And by *ff.* 14. the Quarter Seſſions may contract for their Repairs for ſeven Years, at an annual Sum.]

[By *ſtat.* 14 *G.* 2. *c.* 33. Quarter Seſſions may purchaſe Lands to build County Bridges, not exceeding one Acre for each Bridge.]

(C) Surveyors for the High-way.

(C. 1.) How choſen.

BY the *St.* 2 & 3 *Ph. & M.* 8. On *Tueſday*, or *Wedneſday* in *Eaſter* Week, and by the *St.* 22 *Car.* 2. 12. on ſome Day in *Chriſtmas* Week, and by the *St.* 3 & 4 (or 3) *W. & M.* 12. on 26th *December*, unleſs it be *Sunday*, and then the 27th, The Conſtables, Churchwardens, *&c.* ſhall chuſe two Surveyors for a Year to amend the High-ways leading to Market Towns, who refuſing ſhall pay 20*s.* a-piece.

By the *St.* 3 & 4 (or 3) *W. & M.* 12. The Pariſh ſhall aſſemble and make a Liſt of ſuch Inhabitants, who have 10*l.* *per Annum* in their own or their Wife's Right, 100*l.* Perſonal Eſtate, or farm 30*l.* *per Annum*, or if no ſuch, of the moſt ſufficient, and return the Liſt to the Juſtices of Peace at ſpecial Seſſions, 3d *January*, or, if *Sunday*, the 4th, or in fifteen Days after, of which ten Days Notice ſhall be given to the Pariſh; and the Juſtices ſhall by Warrant under Hand and Seal appoint one, two or more out of ſuch Liſt to be Surveyors for next Year; which Nomination ſhall in ſix Days be notified to the Perſons choſen, by the Conſtable or Surveyor, by leaving the Warrant or a Copy at their Place of Abode. And if any refuſe the Office, they ſhall forfeit 5*l.* each, a Moiety to the Informer, a Moiety to the Repair of the High-way, to be levied, on the Oath of one Witneſs, by Warrant of two Juſtices of Peace by Diſtreſs and Sale, *&c.* And then the Juſtices ſhall nominate another fit Perſon, who on Notice, *&c.* refuſing, forfeits 5*l.* *&c.* And the Conſtables, Churchwardens, and Surveyors not returning a Liſt forfeit 20*s.* each, to be levied, *&c.*

[By *ſtat.* 13 *G.* 3. *c.* 78. On 22 *September* the Conſtables and Houſholders aſſeſſed to public Rates ſhall name ten Inhabitants, who have each 10*l.* a Year Lands, or 100*l.* Perſonal, or occupy Lands of 30*l.* a Year; or, for Want of ſuch, the moſt ſufficient Inhabitants; and in three Days the Conſtable ſhall tranſmit a Copy to a Juſtice near the Place, and ſhall deliver the Original to the Special Seſſions for the Highways, next after *Michaelmas* Quarter Seſſion, and ſhall in three Days give Perſonal Notice, or leave Notice in Writing to the Perſons named. Juſtices to give ten Days Notice of their Special Seſſions, and to name what Surveyors they think fit from the Liſts, if they think them qualified; if not, from other ſubſtantial Inhabitants or Occupiers of Lands living within three Miles of the Place, in the County. Conſtables to give Perſons appointed Notice, by ſerving the Warrant in three Days. If he accepts, he is Surveyor for the Year enſuing. Juſtices to give them a Charge. Perſon named in the Liſt, not accepting, if appointed, in ſix Days, forfeits 5*l.* Perſon not in the

the Liſt, but appointed, not accepting, forfeits 50*s*. No Perſon ſerving can be again appointed (without Conſent) in three Years from ſuch Appointment and Service.]

[If no Liſt returned, or if the Perſons appointed refuſe, the Juſtices ſhall at that, or a ſubſequent Seſſions, in a Month, appoint another Perſon to be Surveyor with Salary out of Forfeitures, not exceeding one-eighth of a ſixpenny Aſſeſſment.]

[If Conſtable does not make Liſt, and return it and the Duplicate, and give the Notices, and ſerve the Warrants, and return the Amount of the Aſſeſſment, if required, he forfeits 40*s*. for every Default.]

[*ff*. 2. If Surveyor with Salary is appointed, a ſubſtantial Inhabitant ſhall be appointed his Aſſiſtant; if he refuſes to accept, he forfeits 50*s*.; and ſo another, under like Forfeiture; and then a third, who ſhall have thoſe two Forfeitures, and further Salary, if neceſſary. Aſſiſtant ſerving, cannot be appointed Aſſiſtant in three Years from his firſt Appointment, without Conſent.]

[*ff*. 3. Surveyor with Salary not reſiding in the Place, ſhall give Bond to account; and ſo by *ſtat*. 13 *G*. 3. *c*. 84. *ff*. 65. ſhall Treaſurer and Surveyor of Turnpike.]

[*ff*. 4. Aſſiſtant is to aſſiſt in calling in and attending the Statute-duty, in collecting Compoſitions, *&c*. and Aſſeſſments, making and ſerving Notices, to account for Money received to Surveyor, or in Default forfeits double Value; and for every wilful Neglect of Duty, forfeits from 5 *l*. to 40*s*. ſhall pay Sums above 40*s*. on Surveyor's Order in Writing. Surveyor not reſponſible for Money not received by him, or paid by his Order.]

[*ff*. 5. Two-thirds of the Pariſh-meeting may agree with a Perſon of Skill to be Surveyor, with a Salary, and return his Name, with the Liſt, to the Juſtices; who may, if they think proper, appoint him, and allow him the Salary agreed on, to be raiſed as the former.]

[If Surveyor dies, or becomes incapable, the Juſtices may appoint another, and allow him the Salary.]

[*ff*. 55. Juſtices of Corporations ſhall not allow Salary to Surveyor appointed by them, unleſs approved by two-thirds of Town-meeting.

[*ff*. 71. Juſtices ſhall give every Surveyor appointed an Abſtract of this Act, and the Clerk to have 6*d*. for it.]

[*ff*. 86, 87, 88. This Act extends not to *Briſtol*, *Whitechapel* or *Wapping*, nor to the Commiſſioners of Sewers.]

[By *ſtat*. 13 *G*. 3. *c*. 84. *ff*. 44. Turnpike Truſtees ſhall ſwear themſelves worth 40 *l*. *per Annum* in Lands, *&c*. or 800 *l*. Perſonal Eſtate, or Heir apparent to a Perſon worth 80 *l*. *per Annum*, or forfeit 50 *l*.]

[*ff*. 46. Keeper of Publick-houſe ſhall not be a Truſtee or Officer of Turnpike; but he may farm the Toll, if he employs a Collector not incapacitated.]

[*ff*. 49, 50. If a ſufficient Number of Truſtees do not appear at any Meeting, the Clerk may fix and give ten Days Notice of another. And no Meeting ſhall be adjourned for more than three Months; no Buſineſs done before Ten in the Morning, nor Adjournment made to any Hour after Two in the Afternoon.]

(C. 2.) Their Authority and Power.

(C 2) To provide Labourers.

By the *St*. 2 *&* 3 *Ph*. *&* *M*. 8. Every Perſon for every Plowland in Paſture or Tillage he occupies in the ſame Pariſh, and every one keeping a Draught, or Plough, ſhall ſend a Cart with Horſes, *&c*. and all Neceſſaries, and two able Men with the ſame, at every Day and Place appointed for Amendment of the High-ways, on Pain of 10*s*. for every Draught: And every other Houſeholder, and every Cottager or Labourer ſhall (unleſs he be a yearly hired Servant) by himſelf or ſufficient Labourer, work every Day, *&c*. on Pain of 12*d*. *per Diem*; But if a Carriage is thought needleſs by the Surveyor, every Perſon ſhall ſend two Labourers each Day for every Carriage, on Pain of 12*d*. *per Man*. And the Leet, or in Default, the Juſtices of Peace at the Quarter-Seſſions may fine all Offences, and the Clerk of the Peace, *&c*. ſhall make Eſtreats indented

of

of the Fines, and deliver one Part to the Conſtable and Churchwardens of the Pariſh, the other to the High Conſtable, *&c.* who may levy by Diſtreſs, and if no Diſtreſs, or he pay not in twenty Days, he ſhall pay double. And the High Conſtable ſhall yearly account to the Conſtable and Churchwardens of the Pariſh on Pain of 40*s.* and the Conſtable and Churchwardens may call him, or their Predeceſſor, to account before two Juſtices of Peace (one *Quorum*) who may commit, till all Arrears paid, but ſhall allow 8*d.* *per Pound* for the Collection, and 12*d.* *per Pound* to the Clerk of the Peace, or Steward of the Leet, and all Fines ſhall go to the Repair of the High-way.

By the *St.* 18 *El.* 10. A Perſon, (not in *London,*) rated to the Subſidy 5*l.* in Goods, or 40*s.* in Lands, ſhall find two Labourers in the High-way while ſo rated, if not otherwiſe chargeable by any former Law, but as a Cottager.

And a Perſon, having a Plowland of Tillage, or Paſture in ſeveral Pariſhes, ſhall find a Cart, *&c.* in the Pariſh where he dwells, as if all in the ſame Pariſh; but if ſeveral Plowlands in ſeveral Pariſhes, he ſhall find for each, as if in the Pariſh where he dwells.

By the *St.* 22 *Car.* 2. 12. Where the Uſage is to carry Gravel, *&c.* on Horſes, *&c.* the Inhabitants ſhall ſend in ſuch Horſes, *&c.* inſtead of Teams; And for Default of working in the High-way, every Labourer ſhall forfeit 18*d.* every Horſe and Man 3*s.* every Cart and two Men 10*s.* for every Day, for Repair of the High-way, to be levied, on Proof before the next Juſtices of Peace by one Witneſs, by Diſtreſs and Sale, *&c.*

By the *St.* 7 & 8 *W.* 3. 29. A Perſon having 50*l.* *per Annum* in Woodland, or any other Land, ſhall be deemed to have a Plowland within the ſaid Acts.

The Juſtices of Peace, *&c.* ought to appoint particular Days for working in the High-way; for it is not ſufficient to ſay, *ſix Days between ſuch a Time and ſuch a Time.* R. 1 Sal. 357.

So an Indictment for not working ought to ſhew the particular Days appointed. *Ibid.*

But if particular Days are not appointed for working in the High-way, a Pariſhioner is not bound to work there. *Ibid.*

[By *ſtat.* 13 *G.* 3. *c.* 78. *ſſ.* 34. Every Perſon keeping a Waggon, *&c.* and three Horſes uſed to draw it, ſhall ſend a Cart and two Men ſix Days in the Year for his Statute-Duty, in the Pariſh where he reſides, for Lands not exceeding 50*l.* *per Annum.* If he occupies in the ſame Pariſh 50*l.* beyond that 50*l.* or occupies 50*l.* in another Pariſh, or does not keep a Team, but occupies 50*l.* in any Pariſh, he ſhall in like Manner ſend a Cart and three Horſes, or four Oxen and one Horſe, or two Oxen and two Horſes, and two Men; and ſo for every 50*l.* which he ſhall further occupy in any ſuch Pariſh; ſuch Carts, *&c.* to be employed in repairing the Roads in the Pariſh where the Lands lie. And every Perſon who ſhall not keep a Team, but occupy Lands under 50*l.* in the Pariſh where he reſides, or any other; and every Perſon keeping a Team, and occupying Lands under 50*l.* in another Pariſh, ſhall pay, for every 20*s.* annual Value, a Penny a Day, and ſo for every 20*s.* above 50*l.* and under 100*l.* and ſo between every fifty: and on Non-payment, to be levied by Diſtreſs. Perſon occupying under 30*l.* ſhall ſend but one Labourer with his Team.]

[*ſſ.* 35. Perſons keeping a Cart, and only one or two Horſes uſed to draw, ſhall ſend ſuch Cart and Horſes, and one Labourer, or pay Compoſition, as Surveyor chuſes. Perſons keeping Coach, *&c.* but no Team, nor occupying 50*l.* *per Annum,* ſhall pay 1*s.* *per Day per* Horſe, or pay Compoſition, as Surveyor chuſes; and every Man between eighteen and ſixty, not chargeable for 4*l.* *per Annum,* nor being Apprentice or menial Servant, ſhall labour ſix Days. Surveyor may require three Labourers inſtead of a Team, or to be paid 4*s.* 6*d.* *per* Day. They are to work eight Hours a Day. If the Men ſent are not ſufficient, or if any refuſe to work, Surveyor may diſmiſs them, and recover the Penalty for not ſending.]

[*ſſ.* 36. Surveyor may require Part of a Team; one Horſe and a Stand-Cart is one-third, two Horſes two-thirds. He may require a Waggon.]

[*ſſ.* 37.

[*ſſ.* 37. He is to give or leave in Writing four Days Notice of the Day, Hour and Place for every Day. Defaulters to forfeit, for a Cart 10*s.* Cart and two Horſes 5 *s.* Cart and one Horſe 3 *s.* Labourer 1 *s.* 6 *d.* Duty, if not all neceſſary, to be equally required. Surveyor to recover Penalties with all ſpeed.]

[*ſſ.* 38. Perſons may compound for Duty, as Juſtices ſhall ſettle, between 6 *s.* and 3 *s.* for a Team, if no Appointment 4 *s.* 6 *d.* for a Team, Cart and one Horſe 2 *s.* Cart and two Horſes 3 *s.* Labourer 4 *d.*]

[*ſſ.* 39. If extravagant Prices are likely to be aſked, Juſtices may order Team-duty in Kind, except Teams of Perſons occupying under 30 *l. per Annum*; and Labourers, paying them the uſual Wages, abating 4 *d.* If only Part required, to be balloted for.]

[*ſſ.* 40. Perſon who keeps a Team, but does not occupy 30 *l. per Annnm* in the Pariſh where he lives, but partly maintains his Horſes from Lands he occupies in other Pariſhes, two Juſtices may mitigate his Duty.]

[*ſſ.* 41. Surveyor on a *Sunday* in *November* to give ten Days Notice in Church, and to repeat it next *Sunday*, of the Time and Place, of ſignifying Intention to compound; and thoſe who ſo ſignify, and pay Compoſition then, or in a Month, are diſcharged of Duty. No Compoſition admitted, unleſs paid within Time aforeſaid, unleſs on Change of Occupier or Inhabitant, who may compound within fourteen Days. Perſon going away in ſix Months may compound for half. Surveyor receiving too much ſhall refund, to bring all to Equality.]

[*ſſ.* 42. Perſons keeping a Draught or Plough, but no Carriage, ſhall pay 1 *s.* *per* Horſe, or two Oxen.]

[*ſſ.* 43. Inhabitants may fix three Months for Seed, Hay, and Corn-harveſt, wherein no Duty ſhall be done, giving Notice to Overſeer three Days after Meeting, and fourteen before the Beginning of each Month.]

[*ſſ.* 44. Surveyor ſhall pay the Proportion of Compoſition for Turnpike-roads to the Treaſurer or Surveyor, to be laid out on the Turnpike in that Pariſh.]

[By *ſtat.* 13 *G.* 3. *c.* 84. *ſſ.* 32. Turnpike-ſurveyor ſhall make the Statute-Duty to be done, and ſhall lay out the Compoſition-money in the Pariſh whence it ariſes; and on Miſapplication forfeits 40 *s.* Where there are two Turnpike-Roads in one Pariſh, and the Statute-duty for both exceeds three Days, Juſtices in Special Seſſion ſhall apportion it.]

[*ſſ.* 58. Juſtices at Special Seſſions may order the Statute-duty appointed for the Turnpike-road to be performed on the other Roads, if their reſpective Condition permits and requires it; and the Money lent on Turnpike is not thereby endangered.]

(C. 3.) For what Time.

By the *St.* 2 & 3 *Ph.* & *M.* 8. Conſtable and Churchwardens, at the Election of Surveyors, ſhall appoint four Days before *Midſummer*, (and by the *St.* 5 *El.* 13. ſix Days,) for Amendment of the High-ways, and give Notice of the Days in the Church the *Sunday* after *Eaſter*: And every Carriage and Labourer ſhall work eight Hours every Day, unleſs licenſed by one of the Surveyors.

By the *St.* 22 *Car.* 2. 12. It is ſufficient, if the High-ways be amended before *St. Luke's* Day, tho' not before *Midſummer*.

Surveyors ſhall appoint ſix Days for Work in the High-way, with regard to the Seaſon of the Year and Weather, and giving Notice publickly ſome convenient Time before the ſeveral Days.

By the *St.* 1 *Geo.* 52. Juſtices of Peace at their ſpecial Seſſions may order great Roads to be firſt amended, and at what Time, and in what Manner to be done, to which the Surveyors are to conform.

And Surveyors ſhall ſummon Teams and Labourers to come in at the firſt ſeaſonable Days the Year ſhall afford, and ſhall repair ſuch as the Juſtices, or, in their Default, as they think needful in the firſt Place.

(C. 4.) To provide Materials.

By the *St.* 5 *El.* 13. Surveyors may take Rubbiſh in any Quarry of a Pariſh, if ready digged, and, if no ſuch, may dig in the ſeveral Ground of a Pariſhioner, (not his Houſe, Garden, Orchard, or Meadow,) for Gravel, Sand, or Cinders for High-way, without Licence, ſo as he dig but one Pit, not above

ten Yards over, and in a Month after fill it up, at the Charge of the Pariſh, on Pain of five Marks for every Default to the Owner by Action of Debt, &c.

[Juſtices cannot make an Order to dig over all an Eſtate, and leave it to the Diſcretion of the Surveyor where; they muſt fix on the particular Part. *Rex* v. *Manning*, T. 30 & 31 G. 2. 1 B. M. 377.]

[They muſt award Satisfaction to the Owner, as well as the Occupier. *Ibid.*]

[They muſt ſpecify what Kind of Materials cannot be found in the waſte Grounds: for they cannot dig in private Grounds becauſe ſome Kind of Materials are not to be found in Waſtes, if other proper may. *Ibid.*]

[They cannot try for Materials in private Soil; they ſhould previouſly know, or have reaſonable Proſpect of finding them. *Ibid.*]

[By *ſtat.* 13 G. 3. *c.* 78. *ſſ.* 27, 28. and 13 G. 3. *c.* 84. *ſſ.* 61. Surveyor may take refuſe Stones of any Quarry in his own Pariſh without Owner's Conſent, but not to dig; and he may in any common Ground or River, in his own Pariſh, (or any other, leaving ſufficient for themſelves) get Gravel, &c. or gather Stones in his Pariſh, without Satisfaction, but Satisfaction for Damage done; Owners Conſent muſt be had to gather Stones, or Licence from a Juſtice. This extends not to Stones thrown up by the Sea, called Beach.]

[*Cap.* 78. *ſſ.* 79. If ſufficient Materials cannot be had in common Grounds, Surveyor may ſearch in incloſed Grounds in his own Pariſh, or by Licence from two Juſtices in Special Seſſion in other Pariſhes, and to take what he thinks neceſſary, making Satisfaction; if they cannot agree, to be ſettled by one Juſtice. Clay may be got where any other Materials may, and may be burnt on any common Ground. Materials muſt not be taken, if Owner gives Notice he ſhall want them to repair Roads, without an Order of two Juſtices, after Hearing.]

[*ſſ.* 31. Surveyor ſhall fence in Holes made in getting Materials, whilſt open; if no Materials found, to fill it up, and cover it with Turf, in three Days; if Materials found, in fourteen Days after digging enough, to fence, ſlope, or fill up; in twenty Days after Appointment, to fill up or ſlope all Holes not likely to be uſed; if likely to be uſed, to fence them with Poſts and Rails, on Pain of 10*s.* for every Default; and if he neglects it for ſix Days after Notice from a Juſtice, the Owner, or a Commoner, to forfeit from 10*l.* to 40*s.* for every Neglect.]

[*ſſ.* 32. Materials for another Pariſh muſt be carried between 1ſt *April* and 1ſt *November*, or in hard Froſt.]

[*ſſ.* 33. Perſons digging Materials, whereby Bridge, Mill, Building, Dam, Highway, Ford, Mines, or Tin-works, may be endangered, forfeit from 5*l.* to 20*s.*]

[*ſſ.* 50. If ſufficient Materials cannot be got by Statute-duty, Surveyor may contract for the ſame, at a Meeting to be held on ten Days Notice. Surveyor not to be concerned in Contract, without Licence from a Juſtice, under Penalty of 10*l.* and Incapacity to be Surveyor.]

[By *ſtat.* 13 G. 3. *c.* 84. *ſſ.* 36. Turnpike-ſurveyor may contract for Materials; to have no Share in the Contract without Licence, on Pain of 10*l.* and Incapacity.]

[*ſſ.* 70, 71. He may, with the Approbation of Truſtees, apply the Tolls and Statute-duty in the Execution of the Powers in the High-way Acts, for providing Materials, enlarging, turning, ſtopping up and ſelling Roads, making Drains, cutting Trees and Hedges, and calling out the Labourers (for the Proportion of Labour) as the Pariſh Surveyors may, making the ſame Satisfaction for Materials and Damages as they ought to make.]

(C. 5.) To remove Obſtructions. Water courſe.

By the *St.* 5 *El.* 13. Surveyors may turn a Water-courſe out of the High-way into any Ditch of another's ſeveral Ground adjoining to the High-way, as they think meet.

By the *St.* 18 *El.* 10. If a Bank be between the High-way and Ditch, the Surveyors, &c. may make Sluices through the Bank to let the Water out of the High-way into the Ditch.

By

By the *St.* 1 *Geo.* 52. If any, who ought to ſcour Ditches or Water-courſes near an High-way, neglect for thirty Days after Notice by the Surveyors, or leave the Earth eight Days after ſcouring, he ſhall forfeit 2*s.* 6*d.* for every eight Yards of Ditch not ſcoured, on the Oath of the Surveyor before Juſtices at the Quarter-Seſſions, and for other Offence, a Sum not exceeding 5*l.* nor under 20*s.* to be levied by Diſtreſs and Sale, *&c.*

[By *ſtat.* 13 *G.* 3. *c.* 78. *ff.* 8. Occupiers of Lands ſhall make and ſcour ſufficient Ditches, Drains, and Water-courſes, and lay Bridges at Cartways, *&c.* and Occupiers of Lands where the Waters uſed to paſs, ſhall ſcour, *&c.* on Pain of 10*s.* on ten Days Notice.]

[*ff.* 12. The Surveyor is to view all High-ways, and if any Nuiſance, to give Perſonal Notice, or leave Notice in Writing at the Place of Abode, and if not removed, Ditches cleaned, Bridges made or mended, Hedges pruned, (*Trees* are not mentioned in this *ff.*) in twenty Days, he is to do it; and the Perſon neglecting, forfeits 1 *d. per* Foot of the Ditch not cleaned or Hedges pruned, beſides the Charges; and on Non-payment, to apply to a Juſtice, who on Proof of Notice as aforeſaid, and of the Work done by Surveyor, and the Charge, he ſhall be repaid on Demand; or, in Default, it ſhall be levied as other Penalties in the Act.]

[*ff.* 14. Where the Ditches, *&c.* are inſufficient, new ones may be made by Surveyor, by Order of one Juſtice, thro' *any* Lands, making Bridges, for convenient Enjoyment of the Lands, and Satisfaction for the Damage, to be ſettled as getting Materials.]

(C. 6.) Trees, Hedges, *&c.*

By the *St.* 5 *El.* 13. Ditches, Fences, *&c.* ſhall be ſcoured, repaired, and kept low, and Trees and Buſhes growing in an High-way ſhall be cut down by the Owner of the Ground, that the Way may be open:—And by the *St.* 18 *El.* 10. upon Pain of 10*s.* for every Default.

And by the *St.* 18 *El.* 10. The Occupier of Ground adjoining to the Grounds next an High-way, ſhall ſcour his Ditches when needful, that the Water from the High-way may have Paſſage over the Grounds next adjoining, on Pain of 12*d. per Rood* not ſcoured.

And none, in ſcouring a Ditch, ſhall throw the Soil into the High-way leading to a Market-Town, and let it lie there ſix Months, on Pain of 12*d. per Load.*

By the *St.* 3 & 4 (or 3) *W.* & *M.* 12. The Owners or Occupiers of Land ſhall ſcour Ditches, Drains, *&c.* next an High-way, carry away the Earth taken thence, lay ſufficient Trunks, Bridges, *&c.* where Cart-ways are into their Grounds, in ten Days after Notice from the Surveyor, on Pain of 5*s.* to be levied by Diſtreſs and Sale, on Proof by one Witneſs before two Juſtices of the Peace, a Moiety to the Informer, a Moiety to the Repair of the High-way.

And ſhall cut down, *&c.* any Tree, Buſh, *&c.* in an High-way, not twenty Feet broad, in ten Days after Notice by the Surveyor, on Pain of 5*s.* to be levied, *&c.* And ſhall keep their Hedges pruned right up from the Roots, and not permit Trees to hang over the High-way, *&c.*

And the Surveyors after View, *&c.* ſhall give Notice the next *Sunday* in the Church, and, if not removed in thirty Days, ſhall in thirty Days remove, *&c.*

And the Surveyors, if need is, may make new Ditches, *&c.* in the Lands next to an High-way, and keep them cleanſed, and enter the Land for that Purpoſe.

[By *ſtat.* 13 *G.* 3. *c.* 78. *ff.* 6. No Tree or Shrub to ſtand in a High-way, within fifteen Feet of the Centre, on Pain of 10*s.* after ten Days Notice, except for Ornament, or Shelter of the Houſe, Building or Court-yard of the Owner.]

[*ff.* 7. Poſſeſſors of Land next adjoining ſhall cut their Hedges, and cut down or lop Trees growing in or near their Fences, that Sun and Wind be not excluded, (except Trees for Ornament;) if not, on ten Days Notice from a Surveyor, he is to complain to a Juſtice, who ſhall ſummon Poſſeſſor to appear at a Petty Seſſions, who ſhall order them to be cut in ſuch Manner as may beſt anſwer

ſwer the Purpoſes; if not done on ten Days Notice, he forfeits 2 *s.* for every twenty-four Feet of Hedge, and 2 *s.* for every Tree; and the Surveyor is to do it, and Poſſeſſor to pay for it, beſides the Penalties, to be levied by Warrant of one Juſtice.]

[*ſſ.* 13. Hedges to be pruned only from the laſt of *September* to the laſt of *March*. None are obliged to fell Timber-trees in Hedges, unleſs when the Road is ordered to be enlarged; or to cut Oaks in the High-way, but in *April*, *May* or *June*, and other Trees in *December*, *January*, *February* or *March*.]

(C. 7.) Rubbiſh, Dung, &c.

By the *St.* 3 & 4 (or 3) *W.* & *M.* 12. None ſhall lay, in an High-way, not twenty Feet broad, any Stone, Timber, Straw, Dung, &c. by which it ſhall be annoyed, on Pain of 5 *s.* to be levied by Diſtreſs and Sale, on Proof by one Witneſs before two Juſtices of Peace, a Moiety to Informer, a Moiety to Repair of the High-ways: And the Owners or Occupiers of Lands next the High-way ſhall, in ten Days after Notice by the Surveyor, remove ſuch Nuſances, and take them to their own Uſe, on Pain of 5 *s.* to be levied, &c. And the Surveyors the next *Sunday* after View of any Annoyances, &c. ſhall give Notice in the Church after Sermon, and if not removed in thirty Days after, ſhall in thirty Days remove them, and diſpoſe of them for the Repair of the High-ways, and be reimburſed their Charges as any Juſtice of Peace ſhall think fit to allow, on Oath of ſuch Notice, &c. to be levied, &c.

By the *St.* 7 & 8 *W.* 3. 29. If any be convicted by the Oath of one Witneſs, or View of a Juſtice of Peace of an Offence in pulling down, &c. any Poſt, Stone, or Bank, &c. for ſecuring any Horſe or Foot Cauſway, he forfeits 20 *s.* a Moiety to the Diſcoverer, and a Moiety for Repair of the High-way, to be levied, &c.

[By *ſtat.* 13 G. 3. *c.* 78. *ſſ.* 9. Whoever lays Stone, Timber, Straw, &c. in High-way, or leaves the Earth of Ditches, ſo as to obſtruct, five Days after Notice, for every Offence forfeits 10 *s.*]

[And by *ſſ.* 10. If it is within fifteen Feet of the Centre, and not removed in five Days Notice from the Surveyor, or any Perſon aggrieved, any Perſon may take it for his own Uſe.]

[*ſſ.* 11. Whoever ſets Waggon, Cart, Carriage, Plow, or Inſtrument of Huſbandry, in High-way (except to unload) ſo as to obſtruct, forfeits for every Offence 10 *s.*]

[*ſſ.* 63. Collector of Tolls on a Bridge ſhall not keep Alehouſe, on Penalty of 5 *l.*]

[*ſſ.* 64. Perſon making Fence on High-way not Turnpike, within fifteen Feet of Centre, or breaking up Soil, or turning Plow or Harrow within fifteen Feet where the Road is formed, and the Breadth marked with Certainty, and is not above thirty Feet, forfeits 40 *s.* to Informer; and Surveyor may take down the Fence at Offender's Expence, and one Juſtice may levy Forfeiture and Expences by Diſtreſs.]

[By *ſtat.* 13 G. 3. *c.* 84. *ſſ.* 37. Turnpike Surveyor ſuffering Rubbiſh, &c. to lie within ten Feet of the Middle of the Road for four Days, forfeits 40 *s.*]

[*ſſ.* 38. Perſon making Fence within thirty Feet, or breaking Soil, or turning Plow or Harrow within fifteen Feet of Centre of Turnpike-road, forfeits 40 *s.* to the Informer; and five Truſtees may take down the Fence at Offender's Expence, and one Juſtice may levy the Expences and Forfeiture on Oath, by Diſtreſs.]

(C. 8.) To enlarge High-way.

By the *St. Wint.* 13 *Ed.* 1. 5. High-ways from Market to Market ſhall be enlarged, and no Buſhes, &c. on 200 Feet on one Side, or other.

By the *St.* 3 & 4 (or 3) *W.* & *M.* 12. Surveyors ſhall make the High-way to a Market Town eight Feet wide at leaſt, and, as near as may be, even and level: And no Horſe Cauſway ſhall be left leſs than three Feet wide.

By the *St.* 8 & 9 *W.* 3. 16. Juſtices of Peace at the Quarter-Seſſions, being five at leaſt, may enlarge any High-way, not taking in above eight Yards, ſo as not to pull down an Houſe, or take the Ground of a Garden, Orchard, Court, or Yard: And may impannel a Jury to aſſeſs on Oath the Damage to the

the Owner, &c. of the Ground taken in, not above twenty-five Years Purchaſe, and for making a new Ditch, &c. on Payment whereof to the Owner, or leaving it with the Clerk of the Peace, the ſaid Ground ſhall be the publick High-way.

But the Juſtices of Peace ſhall firſt ſummon the Owner to appear at the next Quarter-Seſſions, and the Owner may cut down within eight Months all Timber, &c. on the Ground ſo taken in, or, in his Default, the Juſtices may order the Felling, and account for the ſame.

And the Owner may appeal to the Judge at the next Aſſizes, who may affirm, or reverſe and give Coſts, to be levied by Diſtreſs and Sale, &c.

And the Juſtices of Peace may make a Rate not exceeding 6*d. per Pound* to pay the Purchaſe, to be levied, on Non-payment in ten Days after Demand, by Diſtreſs and Sale, &c.

And after an Inquiſition for incloſing Part of an High-way, on an *Ad quod Damnum*, any may appeal to the next Quarter-Seſſions, whoſe Determination, or the filing and recording the Return of Inquiſition by the Clerk of the Peace, if no Appeal, ſhall be final.

By the ſame *St.* 8 & 9 *W.* 3. 16. Juſtices of Peace at the Special Seſſions may order Surveyors to erect Poſts, &c. at Croſs-ways, who neglecting for three Months, forfeit 10*s.* to be levied by Diſtreſs and Sale, or Warrant of any Juſtice of Peace, for erecting ſuch Poſt, &c.

[By *ſtat.* 13 *G.* 3. *c.* 78. *ſſ.* 15. Every public Cart-way leading to a Market-town, ſhall be twenty Feet wide at leaſt, and every public Horſe-way or Draft-way of eight Feet at leaſt.]

[*ſſ.* 16, 17, 18. Two Juſtices may order Roads to be widened, or diverted and turned, but not to exceed thirty Feet in Breadth, nor to pull down Building, nor take Ground of Garden, Park, Paddock, Court or Yard; Satisfaction to be made by Surveyor under the Direction of the two Juſtices taking the View; if they cannot agree, the two Juſtices to certify to the Quarter-Seſſions, and on Proof of fourteen Days Notice, they ſhall impanel a Jury, who ſhall ſettle it, but not above forty Years Purchaſe; and on Payment or Tender, or leaving it with the Clerk of the Peace, if the Owner cannot be found, or refuſes to accept, it ſhall be deemed a High-way. Money may be raiſed by Aſſeſſment by Order of Quarter-Seſſions, not exceeding 6*d.* in the Pound in one Year; the old Road to be ſtoped up, and the Land ſold by the Surveyor, ſubject to Right of Paſſage to any Houſe, &c. which cannot be accommodated by the new; but Mines and Minerals are reſerved to the former Owner. The Coſts ſhall be borne by Surveyor, if the Verdict is for more Money than he offered; if for leſs, by the Party refuſing to accept it.]

[*ſſ.* 19. Two Juſtices may turn a Road with Conſent under Hand and Seal of the Owner of the new one; Perſons aggrieved may appeal from this, or from Inquiſition on *ad quod damnum*, to Quarter-Seſſions, who ſhall finally determine; old Road not to be ſtopt till new one finiſhed; where a Road has been turned above twelve Months, and no Suit or Proſecution, the new one ſhall be deemed the Road; Perſons liable to repair the old Road are liable to repair the new; and ſo by *ſtat.* 13 *G.* 3. *c.* 84. *ſſ.* 63. as to Turnpike Roads turned.]

[*ſſ.* 20. Common Land lying between the Fences of the old Road ſhall not be incloſed; if not common Land, and it exceeds thirty Feet, and is under fifty Feet in Breadth, Satisfaction ſhall be made to the Owner for what it exceeds thirty Feet; if it exceeds fifty Feet, or lies thro' the open Field of another, the Owner of ſuch adjoining Land ſhall have the Land of the old High-way, paying the Surveyor for thirty Feet.]

[*ſſ.* 21. Foot-ways changed, the Damage to be ſettled by two indifferent Perſons, or a third choſen by them.]

[*ſſ.* 22. Where High-ways are diverted, Juſtices may ſtop up unneceſſary High-ways, and ſell the Soil.]

By the *St.* 3 & 4 (or 3) *W.* & *M.* 12. Juſtices of Peace at the Special Seſſions, on Oath of a Sum expended for Materials, &c. or two of them, may by Warrant (C. 9.) To make Rates.

Warrant cauſe a Rate to be made on the Inhabitants, *&c.* purſuant to the Poor's Rate, to be levied by Diſtreſs and Sale, *&c.*

And Juſtices of Peace at the Quarter-Seſſions, being ſatisfied that the High-ways cannot be otherwiſe repaired, may order an Aſſeſſment not exceeding 6*d.* *per Pound* of Real, and for 20*l.* of Perſonal Eſtate, on the Inhabitants rateable to the Poor, for Repair, *&c.* which, on Non-payment in ten Days after Demand, ſhall be levied by Diſtreſs and Sale, *&c.* And the Juſtices of Peace at any Quarter-Seſſions may redreſs any Perſon aggrieved.

By the *St.* 7 & 8 *W.* 3. 29. If a Vill, *&c.* uſing to repair its own Ways, after a Rate of 6*d.* in the Pound, cannot ſufficiently repair them, the Juſtices of Peace at Special Seſſions may order the whole Pariſh to repair.

So by the *St.* 1 *Geo.* 52. Juſtices at Quarter-Seſſions may order an Aſſeſſment, *&c.* before all the Labourers, *&c.* have done their Work.

[The Order muſt ſhew, that the Statute-labour is not ſufficient. *Rex.* v. *Stroud, T.* 6 *G.* *Strange* 315.]

[It muſt not be on the Occupiers of Land only, for others are equally liable. *Ibid.*]

[Order to make a Rate on other Pariſhes, becauſe that Pariſh not ſufficient, good; though it does not appear whether it was made before the ſix Days Work done or not. *Rex* v. *St. George, M.* 12. *G. Fort.* 327.]

[By *ſtat.* 13 *G.* 3. *c.* 78. *ſſ.* 16. Two Juſtices in caſe of Agreement, or Quarter-Seſſions, may grant 6 *d.* Aſſeſſment to pay for enlarging High-ways.]

[*ſſ.* 30. On Application and Oath of Surveyor, of the Sums expended or wanted for buying Materials, Direction-poſts, Bridges, Water-courſes, and Salaries, Juſtices in Special Seſſion may order Aſſeſſment not exceeding 6 *d.* in the Pound.]

[*ſſ.* 45, 46. Quarter or Special Seſſions, if ſatisfied that High-way cannot be amended by Statute-duty, may (on a Week's Notice at Church) grant Aſſeſſment for repairing them. But this Aſſeſſment, with the former for buying Materials, *&c.* ſhall not exceed 9 *d.* in the Pound. (*Nota*, The Aſſeſſment for enlarging not included.)

[*ſſ.* 48. Surveyor's Duty is to collect Monies within the Year, to keep Books of the Receipt and Expediture, for what, and to whom; of Monies due; of Tools, Materials, *&c.* provided; and ſhall produce it, and the Aſſeſſments made, at a Pariſh Meeting, within fifteen Days before Special Seſſion after *Michaelmas*; and carry them to a Juſtice on a Day to be then agreed on, before ſaid Special Seſſion, and verify it on Oath, if required. Juſtice may allow Account, or poſtpone it to Special Seſſions, who may allow, on the Articles objected to by the Juſtice being verified by proper Evidence, or diſallow. Accounts allowed or diſallowed to be tranſmitted to Churchwarden or Overſeer, to be kept for the Pariſh. Surveyor to deliver Duplicate, and alſo all Money, Tools, *&c.* to new Surveyor, who may recover all Sums due, as the former. Surveyor not providing Books, or not entering Accounts or Liſts, or delivering them and Duplicate, forfeits from 5*l.* to 40*s.* not paying or accounting for Money remaining, forfeits double. Surveyor dying, his Executor muſt account, under the ſame Penalties. Surveyor pays Juſtices Clerks 1*s.* for Appointment and Charge, 6*d.* for Bond, 1*s.* for Account and Oath. Whoever takes more forfeits 10*l.*]

[*ſſ.* 51. Surveyor, for any Neglect of Duty not ſpecified, forfeits from 5*l.* to 10*s.* at the Diſcretion of Juſtice or Juſtices having Juriſdiction.]

[*ſſ.* 68. Aſſeſſment not paid ten Days after Demand may be levied by Diſtreſs, by Warrant of one Juſtice; on Default of Diſtreſs, the Party committed till Aſſeſſment and Coſts paid.]

(C. 10.) To reſtrain Carriages. [This is omitted in the *St.* 6 *Anne* 29.]

By the *St.* 22 *Car.* 2. 12. The Owner of a Waggon, *&c.* (if not employed for carrying Hay, Straw, Corn [*unthreſhed*], or about Huſbandry, or for Coals, Chalk, Timber for Shipping, Materials for Building, Stones, Ammunition for the King's Service) travelling in the High-way with above five Horſe-Beaſts at length, unleſs by Pairs, ſhall forfeit for every Offence 40*s.* a third to the Surveyor, a third to the Poor, a third to the Informer, to be levied by Diſtreſs and Sale, *&c.* on Warrant to the High Conſtable or other Officer.

By the *St.* 3 & 4 (or 3) *W.* & *M.* 12. The Juſtices of Peace, at Quarter-Seſſions at *Eaſter* yearly, ſhall ſet the Prices of Land-Carriage and certify them to the Mayor, or other Chief Officer of every Market Town; and a Carrier taking more Forfeits to the Party grieved 5*l.* to be levied by two Juſtices of Peace, by Diſtreſs and Sale, &c.

By the *St.* 7 & 8 *W.* 3. 29. The Owner of a Waggon, &c. (not employed *ut ſupra* by the *St.* 22 *Car.* 2. 12.) drawn with more than eight Horſes, or eight Oxen and an Horſe, or ſix Oxen and two Horſes, or ſix Horſes and two Oxen, or four Oxen and four Horſes, which ſhall draw in Pairs in double Shafts, or a Pole between as Coaches, ſhall forfeit 40*s.* only for every Offence, Two-thirds for the High-way, a Third to the Informer, to be levied by Diſtreſs of one of the Horſes or Oxen by the Conſtable, Surveyor or Overſeer, and on Non-payment in three Days with Charge, &c. by Sale. And the Penalty ſhall be levied by Warrant of one Juſtice, &c. and paid to the Surveyor only, who ſhall account for it on Oath at the Special Seſſions, and pay it only to the Pariſh where the Offence was. And any Perſon compounding with or taking of a Waggoner, &c. any Sum of Money by Way of Reward, &c. for any Offence againſt this Statute, forfeits 40*l.* a Moiety to him who ſues, a Moiety for the Repair of the High-way.

By the *St.* 6 *Ann.* 29. If above ſix Horſes or Beaſts in Length forfeits 5*l.* a Moiety to the Surveyor, a Moiety to the Proſecutor, if an Inhabitant, to be levied, &c.

By the *St.* 9 *Ann.* 18. Any Perſon may ſeize any or all the Horſes or Beaſts of the Offender, and deliver them to the Pariſh Officer, who on Non-payment in three Days, by Warrant of one Juſtice may ſell, &c. *ut ſupra.*

By the *St.* 5 *Geo.* 12. The Owner ſhall forfeit all Horſes, &c. in a Waggon for Hire above ſix, and in a Cart, &c. above three.

[By *ſtat.* 13 *G.* 3. *c.* 78. *ſſ.* 56, 57.——

Waggons with 9 Inch Wheels to be drawn by 8 Horſes
6 Inch rolling 9 Inches 7
6 rolling 6 - - - 6
Leſs than 6 - - 5
Carts with 9 Inch Wheels, to be drawn by 5
6 - - - 4
Leſs than 6 - - - 3
Carriages on 16 Inch Wheels or Rollers, any Number.

For every Horſe above the Number, Owner, forfeits 5*l.* Driver not Owner 10*s.* to Informer. Information before Juſtice muſt be in three Days, Action in one Month, and Informer muſt give Notice on the Day the Offence is committed of an Intention to complain. If Offender lives remote, Juſtice may diſmiſs Complaint, and leave Informer to his Remedy by Action.]

[*ſſ.* 58. *Michaelmas* Quarter-Seſſions may licenſe an increaſed Number of Horſes, up Hills, or in Roads not Turnpike.]

[*ſſ.* 59.] Juſtices may ſtop Proceedings, on Oath of credible Witneſſes, that a Carriage, by reaſon of Snow or Ice, could not be drawn by the Number of Horſes allowed.]

[Number is not limited for one Stone, Rope, Piece of Metal or Timber, or the King's Artillery or Ammunition;]

[Two Oxen to be conſidered as one Horſe. So alſo by *St.* 13 *Geo.* 3. *c.* 84. *ſſ.* 67.]

[By *St.* 13 *Geo.* 3. *c.* 84. Five Truſtees of Turnpike may erect Weighing-Engine; and for Weights exceeding the following, for the Carriage and Loading——

	Summer. Tons Cwt.	Winter. Tons Cwt.
Waggon, 16 Inch Rollers,	8 0	7 0
9 Inch rolling 16	6 10	6 0
9 Inch, - -	6 0	5 10
6 Inch rolling 11,	5 10	5 0
6 Inch, - -	4 5	3 15

Waggons

	Summer. Tons Cwt.	Winter. Tons Cwt.
Waggons leſs than 6 Inch, - -	3 10	3 0
Cart 9 Inch, - -	3 0	2 15
6 Inch, - -	2 12	2 7
Leſs than 6, - - -	1 10	1 7

From 1ſt *May* to laſt *October*, Summer; the reſt Winter.

Cwt.		s.	d.	
For not above 2		0	3	
5		0	6	
10	Over-weight,	2	6	*per* cwt.
15		5	0	
above 15		20	0	

(This by 14 *Geo.* 3. *c.* 82.)

[*ſſ.* 2. Keeper of Gate at Engines to weigh all loaded Carriages that he has Reaſon to ſuſpect, on Penalty of 5*l.*]

[*ſſ.* 3, 4. Truſtee, Creditor, Clerk, Treaſurer, or Surveyor, may oblige Carriage to go back 300 Yards to be weighed, tendering 1*s.* Turning Places to be made within 300 Yards of Engine. Liſt of ſuch Perſons at each Engine. Driver refuſing to return, forfeits 40*s.* and any Perſon may drive Carriage back.]

[*ſſ.* 6. Theſe Weights extend not to Carriages employed in Huſbandry only, or carrying only Manure, Hay, Straw, Fodder, or Corn unthreſhed. Where Lime or Manure is allowed to paſs Toll-free, or for leſs Toll, the Carriage and Loading may be weighed, and pay for Over-weight. (And by 14 *G.* 3. *c.* 82. they ſhall not be weighed).]

[*ſſ.* 7. Quarter-ſeſſions, on Complaint of one Juſtice, two Creditors, or two Truſtees, may ſummon Clerk, Surveyor, and Treaſurer of Turnpike, to ſhew Cauſe next Seſſions, why Engine ſhould not be erected, and order it to be erected; and Truſtees ſhall erect it forthwith, and Treaſurer pay for it out of the Tolls.]

[*ſſ.* 8. Where two Turnpike Roads meet, they may join for an Engine.]

[*ſſ.* 9, 25. No Compoſition for Carriages with Wheels leſs than ſix Inches Broad, and unleſs the Fellies and Tire lie flat.]

[*ſſ.* 10. Perſon unloading Goods before they come to the Engine, or loading after they have paſſed it from Carriage or Horſe belonging to or borrowed by the Carrier, to avoid the 20*s.* *per* Hundred Weight Toll; or if he ſhall ſo unload, in order to carry conſiderable Quantities of Goods thro' the ſame Day, and thereby pay leſs Toll than if they had not been ſo unloaden; on Conviction before one Juſtice, on Oath of one Witneſs, Owner forfeits 5*l.*; Driver, not Owner, ſhall be committed to Houſe of Correction for one Month.]

[*ſſ.* 11. Driver turning out of Road to avoid Weighing, if Owner, forfeits from 5*l.* to 20*s.*; not Owner, 50*s.* to 10*s.*]

[*ſſ.* 13, 14, 15, 16, 18, 19, 20, 21.———

[Waggons with 9 Inch Wheels may have	8 Horſes.	And up Hills	10 Horſes.
6	6	riſing 4 Inches	7
Leſs	4	in a Yard (with	5
Carts 9	5	Permiſſion of	6
6	4	Truſtees and	5
Leſs	3	Quarter-ſeſſions)	4]

[Carriages with 16 Inch Rollers, any Number.]

[In deep Snow and Ice, any Number.]

[On Road where there is weighing Engine, any Number.]

[Horſes in 9 Inch Carriages to draw in Pairs, except an odd Horſe, or not more than four; for every Offence Owner forfeits 5*l.* (Driver, not Owner, 20*s.*) to the Informer. Proſecution before Juſtice muſt be commenced in three Days, Action in one Month, and Notice given to the Driver on the Day of the Offence. If Offender lives remote, Juſtice may diſmiſs Complaint, and leave Informer to his Remedy by Action.]

[Horſes in Carriages with Wheels under nine Inches ſhall not draw in Pairs, except with ſix Inch Wheels authorized by Turnpike-Meeting, and Carriages with two Horſes only. (*Nota*, no Penalty here mentioned.]

[Perſons

[Perſons acting as Driver with more Horſes, or with Carriage not marked, may be carried before one Juſtice, and forfeits from 5*l.* to 10*s.*]

[*ſſ.* 59. Juſtices in *Wales* may augment the Number of Horſes at *Michaelmas* Quarter-ſeſſions.]

[*ſſ.* 17. Taking off Horſes, or altering Diſtance of Wheels before coming to Gate, forfeits 5*l.* before Juſtice; one Witneſs.]

[*ſſ.* 22. Truſtees may mitigate high (prohibitive) Tolls as to ſix Inch wheeled Carriages, ſo as not to take more than for Waggons drawn by four, and Carts drawn by three Horſes. (And by 14 *G.* 3. *c.* 82. within ten Miles of *London* may mitigate theſe Tolls for all Carriages).]

[*ſſ.* 23.] Truſtees, *&c.* to take one Half more than the Tolls impoſed, for narrow wheeled Carriages, and after *Michaelmas* 1776, double Toll.]

[*ſſ.* 24, 25. No Exemption from Toll by Virtue of former Acts to be claimed, unleſs for ſix Inch Wheels, (except for Carriages uſed in Huſbandry only,) and unleſs the Fellies and Tire lie flat.]

[*ſſ.* 26. Carriages on ſixteen Inch Rollers Toll free for one Year, and by 14 *G.* 3. *c.* 82. for five Years, and then pay only Half Toll.]

[*ſſ.* 27. Chaiſe-Marine, Coach, Landau, Berlin, Chariot, Chaiſe, Chair, Calaſh, Hearſe, Carriage with the King's Ammunition or Artillery, Carriage with one Horſe or two Oxen, and nine Inch wheeled Carriage, with one Piece of Stone, Metal, Timber or Rope not included]

[*ſſ.* 28.] Perſons taking Advantage of any Exemption fraudulently, forfeit from 5*l.* to 40*s.*]

[*ſſ.* 29, 30.] Truſtees at a Meeting on a Month's Notice may reduce Tolls, with Conſent of Five-ſixths in Value of the Creditors; and advance the Tolls again.]

[*ſſ.* 31. Truſtees on a Month's Notice may let the Tolls to the beſt Bidder; if he takes more or leſs Toll than directed, he forfeits 5*l.* and the Contract: Other Gate-Keeper forfeits 40*s.*]

[*ſſ.* 34. No Side-gate ſhall be erected but by nine Truſtees, on twenty-one Days Notice; and no Perſon ſhall pay at Croſs or Side-gate, unleſs he goes 100 Yards on the Turnpike Road, or (by 14 *G.* 3. *c.* 57.) except ſpecified in ſome former Statute.]

[*ſſ.* 35. Perſon ſubſcribing to Turnpike may be ſued for Non-payment.]

[*ſſ.* 51. If Truſtees erect Turnpikes contrary to their Power, Quarter-ſeſſions may ſummarily determine, and order Sheriff to remove them.]

[*ſſ.* 52, 53. Mortgagee in Poſſeſſion of Turnpike, ſhall account on Oath, on fourteen Days Notice, on Pain of 10*l.* to be recovered before one Juſtice, and applied to the Roads; and if he keeps Poſſeſſion after he has received what is due, he forfeits double the Surplus received, and treble Coſts.]

[*ſſ.* 54. If Gate-keeper dies, two Truſtees may appoint another till next Meeting. Gate-keeper removed, refuſing to deliver Poſſeſſion of Houſe, *&c.* in two Days, or the Wife of one dead in four Days, one Juſtice may order Conſtable to turn them out, and put the new one in Poſſeſſion.]

[*ſſ.* 45, 55. Clerks, Treaſurers, *&c.* ſhall deliver up Accounts and Papers, on ten Days Notice from five Truſtees, or forfeit 20*l.* and Gate-keepers Account for Money unaccounted for, on Pain of 5*l.* to be recovered before one Juſtice.]

[*ſſ.* 56. Gate-keeper ſhall not be removed as a Pauper, unleſs actually chargeable. No Settlement gained by Gate-keeper, or renting Tolls and Reſidence. Tolls and Toll-Houſe not rateable.]

[*ſſ.* 57. Gate-keeper ſuffering Carriage with too many Horſes, or without Name, *&c.* and not informing in a Week, forfeits 40*s.*]

[*ſſ.* 60. No Toll to be paid for Carriages ſolely employed in carrying Materials to repair the High-way.]

[*ſſ.* 66. A Table of Tolls ſhall be put up at every Turnpike, and Truſtees ſhall ſee that the Weighing-Engines are in order.]

[*ſſ.* 69. From *Michaelmas* 1776, the Tire ſhall be counterſunk, ſo that the Nails ſhall not riſe above the Surface, which ſhall be quite flat.]

[*St.* 16 *G.* 3. *c.* 39. Repeals the Clauſe in 13 *G.* 3. *c.* 84. relating to counterſinking the Nails: And enacts that ſix Inch Tire of Wheels not deviating more than one Inch from a flat Surface ſhall be deemed flat.]

(C. 11) To preſent Offences.

By the *St.* 5 *El.* 13. The Surveyor, within a Month after an Offence againſt the *St.* 2 & 3 *Ph.* & *M.* 8. or this Act, ſhall preſent it to the next Juſtice of the Peace on Pain of 40*s.* who ſhall certify it to the next Quarter-Seſſions, on Pain of 5*l.* where the Juſtices of Peace may inquire and fine for the ſame, as they think meet.—So by the *St.* 22 *Car.* 2. 12. within a Month after any Default, &c.

By the *St.* 22 *Car.* 2. 12. Surveyors and Conſtables ſhall put all Acts in Force for the Repair of the High-way in Execution, on Pain of paying if convicted of Neglect before any Juſtice of Peace by one Witneſs, or View of the Juſtice, what the Juſtice ſhall impoſe not exceeding 40*s.* to be levied by Warrant, &c. to the High Conſtable, &c. by Diſtreſs and Sale, &c. for Repair of the High-way.

By the *St.* 3 & 4 (or 3) *W.* & *M.* 12. Surveyors, in fourteen Days after Office accepted, and every four Months after, ſhall view all Roads, Bridges, &c. in the Pariſh to be repaired by the Pariſh, and preſent on Oath the Condition he finds them in, on Pain of 5*l.* unleſs he be excuſed by two Juſtices of Peace. And at the Special Seſſions, &c. ſhall make Preſentment on Oath, &c. and ſhall give Account of what Money received, and how diſpoſed of, and the Reſidue deliver to the next Surveyors, on Pain of double the Value, to be levied. &c. And the Surveyors, for every Neglect againſt this Act, ſhall forfeit 40*s.* to be levied, &c.

So by the *St.* 1 *Geo.* 52. Surveyors ſhall view, &c. and give Account in Writing on Oath of the Defects of the High-ways, and of the Neglects of Labourers and of thoſe who ought to find Labourers or Teams, &c. on the ſame Pain as is for refuſing the Office.

[By *ſtat.* 13 *G.* 3. *c.* 78. *ſſ.* 60. and *ſtat.* 13 *G.* 3. *c.* 84. *ſſ.* 68. Owner's Name and Abode ſhall be painted in large legible Letters, on conſpicuous Part of Waggon, &c. and on Doors of Coaches, &c. let to Hire; and Waggons, &c. travelling Stages, ſhall have *Common Stage Waggon*; and Perſon uſing it without, or painting falſe Inſcription, forfeits 5*l.* to 20*s.*]

[*ſſ.* 61. and by *ſtat.* 13 *G.* 3. *c.* 84. *ſſ.* 40. Driver riding in his Waggon, unleſs ſome other on Foot or Horſeback to guide, or he has Reins to conduct the Horſes, or who by Negligence hurts any Perſon, or goes on the other Side the Fence, or is ſo diſtant that he cannot direct, or by Negligence interrupts the Paſſage, or Driver of empty Waggon who refuſes to make Way for Coach, &c. or loaded Carriage; whoever drives a Coach let for Hire without Name, or refuſes to diſcover Owner's Name, forfeits on Conviction before one Juſtice, by Confeſſion, View or Oath, 20*s.* if Owner, 10*s.* if not; or Commitment for one Month, or till Payment; and may be apprehended without Warrant, to be carried before Juſtice; if he refuſes to diſcover his Name, may be committed for three Months, or proceeded againſt by Deſcription, without Name.]

[*ſſ.* 62. Two Juſtices may hold Special Seſſions when they pleaſe, giving Notice to the other Juſtices in the Limits.]

(C. 12.) Preſentment upon View of a Juſtice of Peace.

By the *St.* 5 *El.* 13. Any Juſtice of Peace on his own Knowledge may, in the open General Seſſions, make Preſentment of an High-way out of Repair, or any Offence againſt this Act, or the *St.* 2 & 3 *Ph.* & *M.* 8. which ſhall have the Effect of a Preſentment by twelve Men; and the Juſtices of Peace at the ſame Seſſions may fine, &c. ſaving to the Party his Traverſe. *Vide* 2 *Sand.* 157. *Keel.* 34.

[The Preſentment of a Juſtice may be traverſed *generally*. *Rex* v. *Juſtices of Wilts*, *T.* 4 *G.* 3. 3 *B. M.* 1530.]

If the Party traverſes, he admits it to be an High-way, and that it ought to be repaired, as well as upon an Indictment. *R.* 4 *Mod.* 38. *Sho.* 270.

So

So he cannot traverſe the Want of Repair, for that is determined by the Juſtices. *R. Keel.* 34.

And if the Jury find upon the Traverſe, *that the High-way wants repairing, but that it is not an High-way*, the laſt Words ſhall be rejected. *R.* 4 *Mod.* 38.

And therefore, if the Inhabitants preſented ought not to repair, they ſhould plead, *Reparare non debent.* 4 *Mod.* 38.

[By *ſtat.* 13 G. 3. *c.* 78. *ff.* 24. Juſtices of Aſſize, of Counties Palatine, and of Grand Seſſions of *Wales*, on View, and Juſtice of Peace, on View or Information on Oath of Surveyor, may preſent High-way Cauſeway or Bridge, not in Repair, or any Offence againſt this Act. Traverſe ſaved. Offenders may be fined. Quarter-Seſſions may order Proſecution at Expence of the Limit.]

[*ff.* 25. Juſtices in Special Seſſions may order what Road ſhall be firſt repaired, and how.]

[*ff.* 26. They may order Direction-poſts where ſeveral Roads meet, and graduated and Direction-poſts at Waters; and ſo by *ſtat.* 13 G. 3. *c.* 84. *ff.* 41. may the Truſtees on Turnpike-roads; and alſo order Mile-ſtones; and if Surveyor neglects to erect or repair for three Months, he forfeits 20 *s.*]

(C. 13.) Remedy for Fines, &c.

By the *St.* 2 & 3 *Ph.* & *M.* 8. and the *St.* 5 *El.* 13, Fines, aſſeſſed at the Quarter-Seſſions for Offences againſt thoſe Acts, ſhall be eſtreated by the Clerk of the Peace, who ſhall deliver one Part of the Eſtreats indented to the Conſtable and Churchwardens of the Pariſh, the other to the High Conſtable, who ſhall levy the ſame by Diſtreſs for the Repair of the High-ways, and if no Diſtreſs, or he pay not in twenty Days, he ſhall pay double.

And the High Conſtable ſhall yearly account, on Pain of 40*s.* and the Conſtable and Churchwardens may call him or their Predeceſſors to account before two Juſtices of Peace, who may commit till the Arrears are paid, allowing 8*d.* in the Pound for Collection, and 12*d.* to the Clerk of the Peace.

By the *St.* 18 *El.* 10. Fines for any Offence againſt this Act ſhall be levied by Diſtreſs and Sale, as Fines and Amerciaments in Leets, of which the Juſtices of Peace at Seſſions, and the Stewards of Leet, ſhall have Cogniſance.

By the *St.* 22 *Car.* 2. 12. Any convicted of reſiſting Execution, or reſcuing Diſtreſs, *&c.* ſhall forfeit 40*s.* and on Non-payment in ſeven Days, ſhall be committed to Gaol by any Juſtice of Peace near, till Payment, for Repair of the High-way.

All Preſentments ſhall be in the County where the High-way lies.

By the *St.* 3 & 4 (or 3) *W.* & *M.* 12. No Fine, ſhall be returned into the *Exchequer*, but paid to the Surveyor for Repair of the High-way. And if a Fine impoſed on a Pariſh be levied on one or more Inhabitants, on Complaint, two Juſtices of Peace at ſpecial Seſſions may cauſe a Rate for reimburſing him, which being confirmed by two Juſtices of Peace, the Surveyor may collect and levy within a Month and pay to him.

And none ſhall be puniſhed by this Act, unleſs proſecuted in ſix Months after Offence. And all Offences ſhall be determined in the County.

By the *St.* 1 *Geo.* 52. If any Fine, *&c.* be miſapplied by any, he ſhall forfeit 5*l.* to him who informs thereof, to be levied by Diſtreſs and Sale, *&c.*

And the Surveyor for Neglect of Duty by this Act, ſhall forfeit 40 *s.* to be levied and diſpoſed *ut ſupra.*

If the Defendant upon an Indictment be fined, he ſhall not be thereby diſcharged, but a *Diſtringas* goes *in infinitum*, till the Way be repaired. *R.* 1 *Sal.* 358.

But where a Contract is made for Performance of that which the Juſtices have ordered, in the Removal of Filth, *&c.* the Juſtices cannot compel a Performance of the Contract, but the Order for it ſhall be void. *R. Ray.* 433.

So, notwithſtanding theſe Statutes, a Man may be amerced in a Leet for not ſcouring a Ditch in an High-way. *R. Ray.* 250.

[By *ſtat.* 13 G. 3. *c.* 78. *ff.* 47. No Fine, *&c.* for not repairing High-way, and not appearing to Indictment, ſhall be returned into Exchequer, but paid to

to ſuch Perſon near the High-way as Court impoſing Fine ſhall direct, to be applied in Repair; not accounting, to forfeit double. Fine impoſed on Pariſh, levied on one or more Perſons, Special Seſſions may order Aſſeſſment to reimburſe, &c.]

[§. 53. and by *ſtat.* 13 *G.* 3. *c.* 84. §. 39. Perſons damaging Banks, Bridges, Poſts, &c. forfeit on Conviction by one Juſtice, by one Witneſs, or View of Juſtice, from 5 *l.* to 10 *s.* or be committed to hard Labour, from one Month to ſeven Days.]

[§. 54. Juſtices of Corporations to act within their Juriſdictions.]

[§. 65. On Indictment or Preſentment, the Court may order either Party to pay Coſts.]

[§. 66. If Pariſh-meeting agree to proſecute or defend, the Surveyor may charge the Expences agreed to at a Meeting, or allowed by a Juſtice, in his Account.]

[§. 67. Notice of Pariſh-meeting muſt be given in Church the *Sunday* preceeding, and in Writing fixed on the Doors three Days before the Meeting.]

[§. 69. Surveyor is a competent Witneſs in all Caſes.]

[§. 70. The Terms in the Schedule to be uſed with neceſſary Variations only, and no Objection taken for Want of Form; and ſo by 13 *G.* 3. *c.* 84. §. 72.]

[§. 72. Perſons reſiſting Execution of this Act, reſcuing Diſtreſs, or Conſtable not obeying Warrant, forfeit from 10 *l.* to 40 *s.* or to be committed for three Months, or till Payment. So by *ſtat.* 13 *G.* 3. *c.* 84. §. 75.]

[§. 73. Penalties and Forfeitures, and Coſts and Charges, (not otherwiſe directed) to be levied by Diſtreſs, half to the Informer, half to Surveyor for Repair; if Surveyor Informer, all for Repair: For Want of Diſtreſs, Party to be committed for three Months, or till Payment. If Offender lives in another Juriſdiction, any Juſtice where he lives, may, on Copy of Conviction or Order proved on Oath, grant Diſtreſs, or commit as aforeſaid. So by 13 *G.* 3. *c.* 84. §. 76, 78.]

[§. 74. No Perſon to be diſtrained till ſix Days after he is ſerved with the Order. So by *ſtat.* 13 *G.* 3. *c.* 84. §. 77.]

[§. 75. Proſecutor, if the Penalty is 40 *s.* may proceed before a Juſtice, or by Action; if he recovers, ſhall have double Coſts. So by *ſtat.* 13 *G.* 3. *c.* 84. §. 79.]

[§. 76. Only one Recovery for the ſame Offence. Ten Days Notice of Action; Action muſt be commenced in a Month. So by *ſtat.* 13 *G.* 3. *c.* 84. §. 79.]

(§. 77. No Conviction but on Confeſſion, Oath of one Witneſs, or View of Juſtice in Caſes mentioned. An Inhabitant is a competent Witneſs; ſo by *St.* 13 *G.* 3. *c.* 84. §. 74. and Juſtice may act, tho' a Creditor or Truſtee.]

[§. 78. Juſtice may adminiſter Oath to any Perſon for better Diſcovery and Execution. By *St.* 13 *G.* 3. *c.* 84. §. 84. Juſtice or Truſtee may adminiſter Oath.]

§. 79, 80. Diſtreſs ſhall not be unlawful, nor the Parties Treſpaſſers, for want of Form, nor the Parties diſtraining: Treſpaſſers *ab initio*, for ſubſequent Irregularity; but Party aggrieved may recover Satisfaction for the ſpecial Damage by Action, but not if Tender of Amends is made before Action brought; if no Tender, Defendant may before Iſſue joined, pay Money into Court. So by *St.* 13 *Geo.* 3. *c.* 84. §. 80, 81.]

[§. 81. Any Perſon aggrieved may appeal to any Quarter-ſeſſion, giving Notice ſix Days after Cauſe of Complaint, entering into Recognizance in four Days after Notice, to try it, and abide Order. Juſtice, on ſuch Notice, to Return all Proceedings to Quarter-ſeſſion, under Penalty of 5 *l.* Quarter-ſeſſion to determine finally, and award Coſts to either Party. Proceedings not to be quaſhed for want of Form, or removed by *Certiorari*. No Appeal from Conviction, unleſs the Party for Penalty or Forfeiture ſhall at the Time, if preſent, if not, in ſix Days, give Notice, and enter into Recognizance. So by *St.* 13 *G.* 3, *c.* 84. §. 82, 83.]

[§. 82. Action for any Thing done in purſuance of this Act, muſt be proſecuted in three Months, and in the County where Fact committed; Defendant may

may plead general Iſſue, and give Act and ſpecial Matter in Evidence; and, on Verdict for him, Nonſuit, &c. treble Damages. So by *St.* 13 *G.* 3. *c.* 84. *ſſ.* 85. And the Action may be brought in the County where the Defendant reſides.]

By *St.* 13 *G.* 3. *c.* 84. *ſſ.* 33. If Turnpike-Road is indicted, the Court may proportion the Fine between the Inhabitants and the Turnpike.]

ſſ. 42, 43. Perſon deſtroying Turnpike, or any Part of it, or any Bar, &c. erected to prevent paſſing without paying Toll, or any Weighing-Engine, or reſcuing Offenders, are guilty of Felony, and may be tranſported for ſeven Years, or impriſoned for three Years, and may be tried in any adjacent County; and the Damage ſhall be made good by the Hundred; but if the Offender is convicted in twelve Months, they ſhall be repaid.]

[*ſſ.* 47. Five Truſtees may direct Indictments for Nuſances at the Expence of the Turnpike; but not unleſs upon the Confeſſion of Offender, or that a Witneſs can be had.]

[*ſſ.* 48. Information to favour Offender is fraudulent, and a Juſtice may proceed, as if there had been none.]

[*ſſ.* 64. In Action by or againſt Truſtee, the Act or Copy of Order of his Appointment, and Evidence of his acting, ſhall be Proof of his being Truſtee.]

[*ſſ.* 73. Conſtable, &c. refuſing or neglecting to execute, act, or to deliver a Penalty, and Surveyor, &c. neglecting for one Week after the Offence to inform, forfeit 10*l.*]

(C. 14.) Juſtices of Peace may inquire of a Charity for Repair of an High-way.

By the *St.* 22 *Car.* 2. 12. Juſtices of Peace at Seſſions may inquire of the Value of Lands given for Repair of the High-way, and order Improvement and Employment according to the Will of the Donor, unleſs given to a College or Hall of an Univerſity, which hath a Viſitor of its own.

[By *St.* 13 *G.* 3. *c.* 78. *ſſ.* 52. Juſtices in Seſſion may inquire of Lands given to repair Highways, and order Improvement according to Will of Donor, if Perſons intruſted are faulty; except the Lands are given to a College, &c. which has a Viſitor.]

(D) Private Way.

(D. 1.) What ſhall be.

A Private Way is ſuch as goes to a Church, Houſe, Vill, or Cloſe; and is not common for all the King's Subjects. *Per Hale*, 1 *Vent.* 189. *Vide Ante*, (A. 1.)

So it may be from a Meadow, or Cloſe, to a Street. 20 *Aſſ.* 18.

Or, to an High-way.

So it may be from one Part of a Cloſe, acroſs the Ground of another, to another Part of the ſame Land. *Mod. Ca.* 3.

So it may be through or acroſs the High-way to ſuch a Cloſe. *R. Noy* 9.

But a Man cannot have a Way from one Part of the Land of another to another Part. *R. Mod. Ca.* 3.

(D. 2.) How claimed.

(D. 2.) By Preſcription.

A private Way may be claimed by Preſcription, Reſervation, or Grant, or for Neceſſity. *Mod. Ca.* 3.

If a Man preſcribes for a Way, which is now plowed up by the Plaintiff who aſſigned inſtead of it a new Way, which hath been uſed *abinde*, it ſhall be a good Excuſe for uſing the new Way. *R. per* 3 *J. Yel.* 142. 1 *Brownl.* 212.

A Man may preſcribe for a Way to a Church, Market, &c. thro' the Cloſe of another. *Bro. Chimin* 2.

But it is not good, if he preſcribes for a Paſſage; for that does not import a Way by Land, but a Way by Water. *R. Yel.* 163. 1 *Brownl.* 216.

If he ſays, that the Way is Appendant or Appurtenant; for it is not an Intereſt, but an Eaſement. *R. Yel.* 159.

If he does not ſay *a quo termino ad quem* the Way goes. *R. Yel.* 164. 1 *Brown. l.* 6, 216. *R. Mod. Ca.* 3. *Bro. Chimin.* 6.

And that the Way is for Men, Horſes, or Carriages. *R. Yel.* 164. 1 *Brownl.* 216.

For, if he claims *Viam equeſtrem & pedeſtrem* for Carriages, without ſaying, *and* for Carriages, it is not well. 3 *Leo.* 13.

If he ſays that the Way goes from *B.* to a Rectory; for the *Terminus ad quem* is uncertain. *R.* 2 *Leo.* 10.

That it goes from *B.* to a Cloſe adjoining to a Meſſuage in *B.* without ſaying in what Pariſh the Cloſe was; for, tho' the Meſſuage was in *B.* perhaps the Cloſe adjoining was not. *R. Lut.* 1528.

That it goes *de quadam pecia Terræ cont.* 4 *Acras*; for *pecia Terræ* is uncertain. *R. after Verdict. Lut.* 124.

So, if he ſays, that he is ſeiſed of *B.* and has a Way through the Cloſe of the Plaintiff to the *Thames*; for he ought to ſay, that he has a Way from *B.* through the Cloſe of the Plaintiff to the *Thames*. *R. Mod. Ca.* 3.

But if he preſcribes for a Way from *A.* through a Cloſe in *B.* to the Town of *B.* or to *B.* it will be well; for the Town of *B.* ſhall be intended the Place where the Houſes continue. *R. Lut.* 1508.

So, if a Leſſee preſcribes for a Way, he ought to make a good Title to himſelf from his Leſſor; and therefore, if he pleads a Leaſe to him *Habendum a die Dat. Ind. prædict.* it ſhall be bad; for if it was by Indenture. it ought to be ſo pleaded. *R. Lut.* 1528.

But a Man, who preſcribes for a Way through the Cloſe of *B.* need not ſay how many Acres it contains. *Bro. Chimin* 6.

(D. 3.) By Grant.

So a Man may claim a Way by Grant; as, if *A.* grants that *B.* ſhall have a Way through ſuch a Cloſe.

So, if *A.* covenants that *B.* ſhall enjoy ſuch a Way, it amounts to a Grant. *R.* 3 *Lev.* 305.

If a Man ſeiſed of *Blackacre* and *Whiteacre*, uſes a Way through *Whiteacre* to *Blackacre*, and afterwards grants *Blackacre*, with all Ways, *&c.* this Way thro' *Whiteacre* ſhall paſs to the Grantee. *Mod. Ca.* 3.

So, if ſeiſed of two Acres to which a Way is appurtenant, he grants one Acre, with all Ways, *&c.* the Way ſhall be granted. *Ibid.*

So, if a Way be appurtenant to Land, by a Leaſe of the Land the Way paſſes to the Leſſee, without an expreſs Grant. *Per* 3 *J.* 2 *Cro.* 190.

So, if a Way be of Neceſſity, the Grantee of the Land ſhall have it without a Grant of the Way: As, if a Man enfeoffs another of Land, which was encompaſſed by his other Land, the Feoffee ſhall have a Way over the other Land, without any Grant. *R.* 2 *Cro.* 170. *R. Mod. Ca.* 4.

So if there be not another Way convenient. *R.* 2 *Cro.* 170. 2 *Rol.* 60. *l.* 20.

But if a Man bargains and ſells Land with a Way to it, the Way does not paſs; for the Bargain and Sale conveys only an Uſe, and there cannot be an Uſe of a Way created *de novo*. *R.* 2 *Cro.* 190.

(D 4.) For Neceſſity.

So, if a Man has Land, ſurrounded by the Lands of another he ſhall have a Way thro' the Land of the other, for the Neceſſity. *R. Mod. Ca.* 3. *Vide Ante*, (D. 3.)

So, if a Man has Title to a Wreck, he has a Right to have a Way over the Land of another where the Wreck lies, to take it, of Neceſſity. *R. Mod. Ca.* 149.

A Man, who uſes Navigation, has a Right to a Way over the Land next the River where he navigates, if there be Occaſion. *Mod. Ca.* 163.

A Way of Neceſſity ſhall not be loſt by Unity of Poſſeſſion. *R. Lut.* 1489.

But

But, where a Way is claimed for Neceſſity, it will be a good Plea, that the Plaintiff has another Way. *R. Mod. Ca.* 4.

Otherwiſe, where claimed by Grant, or Preſcription. *Mod. Ca.* 4.

(D. 5.) How it ſhall be uſed.

If a Man, upon a Leaſe to *A.* for Years, reſerves a Way to himſelf thro' the Houſe of the Leſſee, to a Back-houſe; he cannot uſe it but at ſeaſonable Times, and upon Requeſt. *D.* 1 *Vent.* 48.

So, if a Feoffor grants to a Feoffee a Way acroſs his Backſide to a Houſe and back again, he cannot uſe it to another Place. *R.* 1 *Rol.* 391. *l.* 20.

So, if he grants a Way from *D.* to *Blackacre*, and the Feoffee afterwards purchaſes Lands adjoining to *Blackacre*; he cannot juſtify the Uſing the Way to thoſe Lands. *R.* 1 *Rol.* 391. *l.* 50. *R.* 1 *Mod.* 190.

And therefore, in Treſpaſs if the Defendant juſtifies for a Way to *Blackacre*, the Plaintiff in his Replication may ſhew the ſpecial Matter, that he uſed the Way to Lands adjoining to *Blackacre*. 1 *Rol.* 391. *l.* 50. *R. Lut.* 113, 4.

But if the Plaintiff replies, that the Defendant uſed the Way to *Blackacre*, and thence to the other Lands, it is bad. *R.* 1 *Rol.* 391. *l.* 40.

But if *A.* has a Way thro' the Land of *B.* who plows up the Soil where the Way was uſed, and leaves another Part of the ſame Cloſe for a Way; *A.* may uſe the antient Track, and need not go where the Way is aſſigned *de novo* *R. Noy* 128.

(D. 6.) By whom it ſhall be repaired.

The Grantee of a Way has Power to amend it, as Incident. *Godb.* 53. *Semb.* 1 *Sand.* 323.

But if a Man grants a Way thro' his Cloſe to another, the Grantor is not bound to keep it in Repair, if it be foundrous. 1 *Sand.* 322.

If a Man be bound by Preſcription to the Repair of a Way, he need not keep it in better Repair than it always was. *Mod. Ca.* 163. 1 *Sal.* 358.

But if it be impaſſable, a Paſſenger may break the Fence, and go *extra Viam* as much as is neceſſary, to avoid the bad Way. *Jon.* 296, 7.

(D. 7.) Remedy for not repairing it.

If a common Way to a Church, Vill, *&c.* be out of Repair, he who ought to repair it may be indicted for it. *Mod. Ca.* 163.

And if he be convicted upon the Indictment, the Court will not ſet the Fine till the Juſtices of Peace certify, that it is well repaired. *Mod. Ca.* 163.

And if he be fined before the Way be repaired, yet a *Diſtringas in Infinitum* ſhall afterwards go againſt the Party till the Sheriff certify, that the Way is in good Repair. *Per Holt, Mod. Ca.* 163.

(D. 8.) Obſtruction.

If a private Way be obſtructed, an Action on the Caſe lies. *Vide Action upon the Caſe*, (A. 2.)

If he, who has the Way, has a Freehold, and alſo he, who has the Land in which, *&c.* an Aſſize lies. *R.* 3 *Leo.* 13.

And it is ſufficient to ſay, *quod obſtruxit*, or, *obſtupavit*, generally, without ſaying, how, *viz.* by a Ditch, Fence, *&c.* *R.* 3 *Leo.* 13.

If a Way be thro' the Yard of another, who erects a Gate to his Yard, he who uſes the Way may juſtify the Breaking of the Gate ſo erected, thro' which he could not paſs, without ſaying, that it was locked. *R. upon Demurrer*, 3 *Lev.* 92.

CHIVALRY.

Vide Courts, (E. 1. &c.)—*Guardian*, (A.)—*Waſte*, (F. 1.)

CHOSE IN ACTION.

Vide Aſſignment, (C. 1.)—*Grant*, (D.)

CHURCH.

Vide Advowſon.—*Diſmes*, (E. 1.)—*Egliſe, per Totum.*—*Prohibition*, (F. 3.—G. 2, 5.)—*Quare Impedit*, (A.)

Freehold of the Church.

Vide Egliſe, (G. 1.)

Parish Church.

Vide Egliſe, (C.)

Repairs and Ornaments of a Church.

Vide Egliſe, (G. 2.)—*Prohibition*, (G. 2.)

Seats in a Church.

Vide Action upon the Caſe for a Diſturbance, (A. 3.)—*Egliſe*, (G. 3.)

Churchwardens.

Vide Egliſe, (F. 1, 2, 3.)

Church-Yard.

Vide Cemetery, (A. 1, &c.)—*Egliſe*, (E.)—*Prohibition*, (G. 3.)

CINQUE-PORTS.

Vide Abatement, (D. 3, 5.—*Franchiſes*, (E. 1, &c.)

CIRCUITY of ACTION.

Vide Action, (H.)

CITIZEN.

Vide Burrough, (B. 2.)—*Parliament*, (D. 6.)

CITY.

Vide Burrough, (B. 1.)—*Courts*, (O. 1, &c.—P. 1, &c.)—*Parliament*, (D, 12.)

CIVIL LAW.

Vide Canons.

CLAIM.

(A. 1.) Continual Claim.

IF a Diſſeiſee, or any one, who has Title to enter into the Poſſeſſion of another, makes continual Claim, his Entry ſhall not be taken away by a Deſcent afterwards from the Diſſeiſor, or other Tenant of the Land. *Co. L.* 250.

So the Dying ſeiſed of the Feoffee, or other who has Title, as well as of the Diſſeiſor, and a Deſcent to his Heir, does not take away the Entry of him who makes continual Claim. *Co. L.* 251. *a.*

Continual Claim is of the ſame Effect as an Entry; and the Continuance in Poſſeſſion of the Diſſeiſor is a new Diſſeiſin *toties quoties*. *Lit. S.* 429, 430.

And if he in Poſſeſſion had only an Eſtate-tail before, he has now a Fee-ſimple by Diſſeiſin. *Lit. S.* 429.

(A. 2.) How it ſhall be made.

A Man, who makes continual Claim to prevent a Deſcent, ought to go to the Land or Parcel of it, if he dare. *Lit. S.* 421. And make his Claim upon the Land. *R. Mod. Ca.* 44.

And if he dare not, for fear of Death, Battery, or Mayhem, he ought to go as near to the Land as he dare, to make his Claim. *Lit. S.* 421.

Or, for fear of Impriſonment. *Co. L.* 253. *b.*

(A. 3.) By whom.

Continual Claim ought to be made by him who has Title to enter. *Lit. S.* 416. *Vide Forfeiture*, (A. 6, 7.)—*Vide Poſt*, (B. 2.)—*Vide Condition*, (G. 1.)

And therefore, if Tenant for Life, Remainder in Fee, be diſſeiſed, Claim ought to be made by him in Remainder. *Ibid.*

If he has Right of Entry, tho' he has no Title to the Profits immediately, he may make continual Claim: As, if Leſſee for Years, or Tenant by Statute Merchant, Staple, *&c.* be ouſted, and the Reverſioner diſſeiſed, he in Reverſion may make continual Claim, tho' he is not entitled to the preſent Profits. *Co. L.* 250. *b.*

So continual Claim by Tenant for Life is ſufficient for him in Reverſion or Remainder. *Lit. S.* 416.

If continual Claim be made by *A.* and then the Diſſeiſor or his Feoffee dies ſeiſed, and the Land deſcends, and then *A.* dies; his Heir, upon this Claim, may enter. *Co. Lit.* 250. *b.*

So, if a Perſon who has Right of Entry commands his Servant to make Claim, and the Servant comes to the Land, and makes the Claim, it is ſufficient. *Lit. S.* 433.

So, if the Maſter dare not go nearer the Land than *D.* and commands his Servant to go to *D.* and make Claim, and the Servant does, it is ſufficient. *Ibid.*

So, if a Recluſe, a Man languiſhing, or decrepid, commands his Servant to make Claim, and the Servant goes as near as he dare, for fear of Death, *&c.* and makes Claim, it is ſufficient. *Lit. S.* 434.

Otherwiſe, if the Maſter was of good Health; for he did not do all that his Maſter dared do. *Lit. S.* 435.

(A. 4.) At what Time.

Vide Poſt, (B 3)

By the Common Law continual Claim did not avail, unleſs it was within a Year and a Day incluſive before the Dying ſeiſed. *Co. L.* 255.

But it was ſufficient if Claim was once made within the Year and Day before the Dying ſeiſed, tho' the Diſſeiſor had Poſſeſſion for twenty or forty Years after the Diſſeiſin. *Lit. S.* 427.

And tho' after the Claim made, the Diſſeiſor enfeoffed a Stranger, who died ſeiſed within the Year and Day, but before any new Claim. *Lit. S.* 425.

Yet by the *St.* 32 *H.* 8. 33. If a Diſſeiſor dies ſeiſed within five Years after the Diſſeiſin, the Entry of him who has Right is not taken away, tho' he did not make continual Claim.

But, if he ſurvives the five Years, continual Claim ought to be made, as at Common Law. *Co. L.* 256. *a.*

When a Deſcent ſhall toll an Entry, unleſs it be avoided by continual Claim, *Vide in Deſcent*, (D. 1, &c.)

What ſhall be a Diſclaimer, and the Effect of it, *Vide Diſclaimer*, (A.—B.)

(B) Claim to avoid a Fine.

(B. 1.) How it may be made.

BY the Common Law, a Fine might be avoided by the Entry of his Claim upon Record under the Foot of the Fine (which is now taken away) by a *Præcipe quod reddat*, brought of the Land, by Entry or continual Claim. 2 *Inſt.* 518. 2 *Leo.* 53. *Pl. Com.* 358. *b.*

But by the *St.* 4 *H.* 7. it muſt be by lawful Action or Entry.

And therefore, a Man may avoid a Fine by an Action commenced within five Years after his Right accrues.

And it is ſufficient, that the Action be commenced within Time, tho' he has not Judgment or Execution till ſeven Years, or after. *Pl. Com.* 358. *b.*

So a Man may avoid a Fine by actual Entry, where his Entry is not taken away.

By a Claim to be Heir, at the Gate; if at the ſame Time he enters upon the Land, or Houſe, tho' he does not make his Claim there. *Skin.* 412.

So, by his Claim among his Neighbours, as near the Land as he can, when he dare not enter, and his Entry was congeable. *Pl. Com.* 358. *b.* *Vide Ante*, (A. 2.)

But if an Action was commenced, and afterwards diſcontinued, that does not amount to a Claim to avoid a Fine. *D.* 1 *Vent.* 45. *R. Dal.* 107.

Nor an Entry of his Claim upon Record *ſub pede Finis*. *R.* 4 *Leo.* 104.

So the Delivery of a Declaration in Ejectment does not amount to an Entry. *R.* 1 *Sand.* 319. 1 *Mod.* 10. 1 *Vent.* 42.

Tho' the Defendant afterwards appears upon it, and confeſſes Leaſe, Entry, and *Ouſter*. *R.* 1 *Sand.* 319. 1 *Vent.* 42.

[There muſt be an actual Entry to avoid a Fine; and if the Demiſe is laid before the Time of that Entry, an Ejectment cannot be maintained. *By all the Judges in Parliament. Barrington* v. *Parkhurſt*, *H.* 11 *G.* 2. *Str.* 1086. *Andr.* 125.]

[But if the actual Entry is before the Fine, and the Demiſe laid after the Entry and before the Fine, it is good, though the Ejectment was brought after the Fine. *Muſgrave* v. *Shelly*, *P.* 21 *G.* 2. 1 *Wilſ.* 214.]

So a Bill in *Chancery* is not ſufficient to avoid a Fine. *Dal.* 116.

So an Entry by *Ceſtuy que Truſt*, without a *Subpœna*, is not ſufficient to avoid a Fine, as to the Truſt. *Ca. Ch.* 268, 278.

And no Claim or other Act can be ſufficient to avoid a Fine, as to a Truſt, but a *Subpœna*. *Ca. Ch.* 278. 2 *Ca. Ch.* 126.

So an Entry is not ſufficient to avoid it, where the Fine makes a Diſcontinuance; for it ought to be by Action. 1 *Ver.* 213.

So by the *St.* 4 & 5 *Ann.* 16. No Claim, or Entry, of or upon any Lands, *&c.* ſhall be of Force to avoid any Fine levied, or to be levied with Proclamations in *C. B.* County Palatine, or Grand Seſſions of *Wales*, unleſs upon ſuch Entry, or Claim, an Action ſhall be commenced within one Year after, and proſecuted with Effect.

[Actual Entry is not neceſſary to avoid a Fine, without Proclamations. *Jenkins* v. *Pritchard*, *H.* 30 *G.* 2. 2 *Wilſ.* 45.]

So an Entry into Land not comprized in the Fine, claiming that which was comprized, is not ſufficient. *Hard.* 400.

Nor is an Entry in Land in one County, claiming Land in another, ſufficient for the Land in the other County. *Hard.* 401.

Nor a Claim at a Gate in the Street, without Entry upon the Houſe, or Land. *Skin.* 412.

Chancery will not ſupply a Defect in an Entry to avoid a Fine. *Ca. Ch.* 278.

(B. 2.) By whom.

A Claim to avoid a Fine may be made by him who has a preſent Right. *Pl. Com.* 359. *a.* *Vide Ante*, (A. 3.)—*Condition*, (G. 1.)

So, if a Stranger, of his own Head, enters to avoid a Fine, and he who has the Right aſſents afterwards within five Years, it is ſufficient. *Co. Lit.* 245. *a.*

So, if one avoids a Fine by Entry or Claim, it ſhall be avoided as to all others. *Pl. Com.* 358. *b.*

But an Entry by a Stranger to avoid a Fine, without the Aſſent of the Party, precedent, or ſubſequent, is not ſufficient. *Ca. L.* 245. *a.* *R.* 9 *Co.* 106. *a.* *R. Cro. El.* 561.

So an Entry by a Stranger, for a Condition broken, does not avail without an expreſs Aſſent. *R.* 2 *Cro.* 57.

So an Entry by him in a remote Reverſion, or Remainder does not avail; for it ought to be by him who had the preſent Right. *Pl. Com.* 359. *a.*

(B. 3.) At what Time.

An Entry, Action, or Claim to avoid a Fine, by the Common Law, ought to be made within a Year and a Day. *Pl. Com.* 357, 358.

But by the *St. de Donis*, 13 *Ed.* 1. The Iſſue in Tail, or he in Reverſion, *neceſſe non habet opponere Clameum*; for, as to him, the Fine *ipſo Jure eſt nullus*.

Yet the Fine of Tenant in Tail makes Diſcontinuance, which ought to be avoided by *Formedon* by the Iſſue, or him in Remainder or Reverſion.

So an Infant, a Man of nonſane Memory, in Priſon, or out of the Realm, was not bound to make Claim within the Year and Day. *Pl. Com.* 359. *b.*

And not being bound to make Claim, a Non-claim, by the Common Law, does not prejudice them for ever. *Pl. Com.* 360. *a.*

So, if a Man of full Age, *&c.* who ought to make Claim, dies within the Year; his Heir within Age, *&c.* was exempted for ever. *Pl. Com.* 360. *Cont. ibidem* 371, 2.

So by the *St.* 34 *Ed.* 3. 16. Non-Claim was ouſted as to all Perſons.

For more of Title *Claim*, *Vide Condition*, (O. 5.)—*Fine*, (K. 1, 2.)—*Forfeiture*, (A. 4.)—*Franchiſes*, (A. 1, 2.)—*Officer*, (E. 6.)—*Releaſe*, (E. 2.)

CLERGY.

Vide Appeal, (G. 9.)—*Juſtices*, (Y. 1, &c.)

CLERK.

Six Clerks.

Vide Chancery, (B. 7.)

County Clerk.

Vide Viſcount, (B. 2.)—*County*.

Clerk of the Market.

Vide Market, (H.)

Clerk of the Peace.

Vide Juſtices of Peace, (D. 5.)

Clerk of the Pipe.

Vide Courts, (D. 13.)

Ignorance, or Miſpriſion of the Clerk.

Vide Amendment, (D. 1, 9.—E. 1, 2.—G. 2.—H. 3.—T. 1, &c.—V. 1, &c. *and many other Places in the ſame Title.*

CODICIL.

Vide Deviſe, (D. 3.)

COIN, and COINAGE.

Vide Juſtices, (K. 7.)—*Money, per Totum.*—*Prærogative*, (D. 39.)

COLLOQUIUM.

Vide Action upon the Caſe for Defamation, (G. 7, 8, &c.)

COLLUSION.

Vide Covin.

COLOUR.

Vide Pleader, (3 M. 40, 41.)

COMMAND.

Command of Forces.

Vide Prærogative, (C. 3.)

COMMENCEMENT.

Commencement of a Lease.

Vide Eſtates, (G. 8, 9.)

Commencement of Parliament.

Vide Parliament, (E. 1.)

Commencement of Terms.

Vide Temps, (C. 1, &c.)

COMMENDAM.

Vide Prærogative, (D. 18, &c.)

COMMISSION and COMMISSIONERS.

Commiſſion to take an Anſwer.

Vide Chancery, (K. 3.)

Commiſſion of Array.

Vide War, (B. 3.)

Commiſſion, and Commiſſioners of Bankruptcy.

Vide Bankrupt, (D. 1, &c.)

Commiſſion for Examination of Witneſſes.

Vide Chancery, (P. 2, &c.)

Commiſſioners of the Great Seal.

Vide Chancery, (B. 1.)

Commiſſion of Juſtices.

Vide Juſtices, C. 2. G. 1.)—*Prærogative*, (D. 29.)

Commiſſion of Partition.

Vide Parcener. (C. 10.)

Commiſſion of the Peace.

Vide Juſtices of Peace, (A. 6, &c.)

Commission of Rebellion.

Vide Chancery, (D. 5.)

Commission for Review.

Vide Prærogative, (D. 16.)

Commission, and Commissioners of Sewers.

Vide Sewers.

Commission for Visitation.

Vide Visitor, (A. 3.)

Commission, and Commissioners of Charitable Uses.

Vide Uses, (N. 14, &c.)

COMMITEE.

Vide Parliament, (E. 6, &c.)

COMMON.

(A) Common.

COMMON imports a Privilege to take a Profit in Common with many. *Co. L.* 122. *a.*

And a Man may have Common of Pasture, Turbary, or Piscary. *F. N. B.* 180. *L.*

So Common of Estovers in a Wood, Minerals, &c. *Co. L.* 122. *a.*

Common is incident to the Land to which it is appendant; and tho' it is to be taken in another Parish, it shall be charged, &c. where the Land lies. 1 *Sal.* 169.

[Lands which are stinted for five Months, and open for seven, and enjoyed with the other Common, is Part of the Waste and Common of the Manor, and is included in a Reservation of the Waste, and all Mines in it. *Gibson* v. *Smith*, *P.* 1741. 2 *Atkyns* 182.]

(B) Appendant.

THERE are four Kinds of Common of Pasture; *Appendant*, *Appurtenant*, Common *in Gross*, and Common *pur Cause de Vicinage*. *Co. L.* 122. *a.*

Common Appendant ought to be Time whereof, &c. 1 *Rol.* 396. *l.* 40.

For it cannot begin at this Day. 1 *Rol.* 396. *l.* 42. 26 *H.* 8. 4. *a.*

Common Appendant is of Common Right. 1 *Rol.* 396. *l.* 44.

For if a Man had enfeoffed others, before the Statute of *Quia Emptores terrarum*, of Lands, Parcel of his Manor, the Feoffees should have Common, for their commonable Cattle, within the Wastes, &c. of the Lord, as incident to their Feoffment. 2 *Inst.* 85, 6. *Per* 2 *J.* 1 *Rol.* 396. *l.* 45. 4 *Co.* 37.

Common Appendant ſhall be for the whole Year.

Or, for a Time limited; as, for the whole Year, except when the Lord depaſtures his Cattle. 1 *Rol.* 396. *l.* 49.

For the whole Time after Severance, until the Land be ſown again. 1 *Rol.* 397. *l.* 8.

And in ſuch Caſe, if only Part be ſown again, the Common continues in the Reſidue.

For the Time after the Hay removed, till *Candlemas*. 1 *Rol.* 397. *l.* 10.

From ſuch a Day to ſuch a Day. 1 *Rol.* 397. *l.* 12.

As long as he inhabits ſuch a Houſe, or pays ſo much. 1 *Rol.* 397. *l.* 5.

For the Time after Severance, till the re-ſowing every two Years, and for the whole Year every third Year. 1 *Rol.* 397. *l.* 19.

Until the Re-ſowing with the Aſſent of the Commoners. *R.* 1 *Leo.* 73.

Common ſhall be Appendant to Arable Land, not to a Houſe. 1 *Rol.* 397. *l.* 28, 29.

Nor to a Meadow, *&c.* nor any other than Arable Land. 26 *H.* 8. 4. *a.* 4 *Co.* 37. *b.* 1 *Rol.* 397. *l.* 29.

Vide Appendant and Appurtenant, (B. 3.)

Nor to Lands improved out of the Waſte, within Time of Memory. 1 *Rol.* 397. *l.* 31.

Yet if a Man preſcribes for Common appendant to a Houſe, Cottage, *&c.* it will be well, for it has a Curtilage, *&c.* *R.* 1 *Sal.* 169. *R.* 2 *Jon.* 227.

And it may be appendant to a Manor, Carue of Land, *&c.* which comprehend a Houſe, Meadow, *&c.* but it ſhall be intended appendant only to the Arable in it. *R.* 4 *Co.* 37. *b.*

So, if the Arable be converted to Paſture, the Common remains. 4 *Co.* 37.

Common Appendant ſhall be only for Beaſts of the Plough, which till the Land; as Horſes, Oxen, *&c.* or for Cattle which compoſt the Land; as Cows and Sheep. 1 *Rol.* 397. *l.* 38. 4 *Co.* 37. *a.*

And therefore, if a Man preſcribes for Common Appendant for all Cattle, it will be bad; for that extends to Swine, Goats, Geeſe, *&c.* 1 *Rol.* 397. *l.* 43.

But, regularly, the Cattle for which Common Appendant is claimed, ought to be *levant* and *couchant* upon the Tenements to which, *&c.* 1 *Rol.* 398. *l.* 1.

Yet a Man may claim Common Appendant for a certain Number of Cattle. 1 *Rol.* 398. *l.* 7.

(C) Appurtenant.

COMMON Appurtenant originally began by expreſs Grant.

And a Man muſt preſcribe for it. *Co. L.* 122. *a.*

Or it may begin within Time of Memory. *Cro. Car.* 482. 26 *H.* 8. 4. *a.*

As, if a Man claims Common for all Cattle, it is Common Appurtenant; for it includes Swine, Goats, Geeſe, *&c.* 1 *Rol.* 397. *l.* 44. *Vide Infra.*

If he preſcribes, that he, and all thoſe whoſe Eſtate he has in ſuch a Houſe, have Common in ſuch a Place for two Beaſts. 1 *Rol.* 399. *l.* 39.

That all the Inhabitants in an antient Meſſuage in ſuch a Vill have Common in ſuch a Place; but it cannot extend to Habitations erected *de novo*. *R. Sav.* 81.

If a Man by Bargain and Sale ſells *B.* to another, and afterwards grants Common to the Bargainee for all Cattle which manure *B.* and afterwards the Deed is inrolled; the Bargainee ſhall have Common as appurtenant to *B.* tho' his Eſtate in it was not perfect at the Time of the Grant. *R.* 1 *Rol.* 400. *l.* 7.

Tho' the Grant had no Reference to the Bargain and Sale. *R.* 1 *Rol.* 400. *l.* 7.

So, if he grants Common for Cattle *levant* and *couchant* upon Land, which he ſhall purchaſe within a Month. *R.* 1 *Rol.* 400. *l.* 19.

Or, for Cattle *levant* and *couchant* upon *B.* and he afterwards purchaſes it. *Dub.* 1 *Rol.* 400. *l.* 27.

If

If a Man grants Common to another within his Manor or Lands of *D.* it is good, tho' it does not appear that there is any Waſte there; for it is granted generally, within his Lands of *D. R. upon a ſpecial Demurrer, Cro. Car.* 599.

So, if he preſcribes for Paſturage in a Meadow for two Horſes till the Hay be mowed, it is good. *R.* 2 *Cro.* 27.

A Man may preſcribe for Common, as appurtenant to his Manor, or Freehold, for all Cattle. 1 *Rol.* 401. *l.* 8.

Or, for Hogs *levant* and *couchant*. 1 *Rol.* 401. *l.* 29.

Or, for a certain Number of Cattle, as 300 Sheep, *&c.* without ſaying, *levant* and *couchant*. 1 *Rol.* 401. *l.* 15. 2 *Cro.* 27. *R.* 2 *Mod.* 185.

So, for Cattle *levant* and *couchant* upon a Meſſuage *cum Pertinentiis*; for this comprehends a Curtilage of an Acre or more, upon which they may be *couchant*. *R.* 2 *Jon.* 227.

So the Lord may claim Paſturage for two Horſes in 1000 Acres of Meadow till it be cut for Hay; for ſo large a Quantity cannot be much prejudiced by only two Horſes. *R.* 2 *Cro.* 27.

(D) In Groſs.

COMMON in Groſs is ſuch as is not Appendant or Appurtenant to any certain Land. *Co. L.* 122. *a.*

And ought to be claimed by Preſcription, or by Deed. *Ibid.*

As if a Man who has Common Appurtenant for a certain Number of Cattle, grants it over to another, it ſhall be Common in Groſs. *R.* 1 *Rol.* 402. *l.* 10. *Cro. Car.* 433. 2 *Lev.* 67.

So, if a Man grants Common to another for his Cattle *ubicunque* the Cattle of the Grantor go, it will be Common in Groſs.

And if he doth not reſtrain the Cattle of the Grantee to any certain Number, it is a Common in Groſs *ſans Nombre*.

So, if he grants Common *quandocunque averia ſua ierint*. *Cro. Car.* 599.

So, Common for the Inhabitants of antient Meſſuages in ſuch a Town. 2 *Leo.* 44.

So, Common to the Mayor and Burgeſſes of ſuch a Town. *R.* 2 *Lev.* 246.

Yet Common in Groſs *ſans Nombre* is not good, if there be not ſome Reſtraint or Limitation; as, if a Corporation preſcribes for all of the Corporation, for all their Cattle commonable, without ſaying, *levant* and *couchant* within the ſame Town, it is ill. *R.* 1 *Sand.* 346. *but Sand. not ſatisfied.* 1 *Mod.* 6. *R. Jon.* 298.

If *A.* claims Common *ſans Nombre*, he ought to ſay, *levant* and *couchant* upon ſuch Land. *R.* 2 *Mod.* 185.

But Common Appendant never can become Common in Groſs. 1 *Rol.* 401. *l.* 52.

Nor, Common Appurtenant for Cattle *levant* and *couchant* upon ſuch Tenements. 1 *Rol.* 402. *l.* 2. *Per Hale*, 2 *Lev.* 67.

And, if Common Appurtenant be granted with a Parcel of Lands to which, *&c.* it ſhall be Appurtenant to ſuch Parcel. *R.* 1 *Rol.* 402. *l.* 15. *Cro. Car.* 432.

(E) Pur Cauſe de Vicinage.

COMMON *pur Cauſe de Vicinage* is, when two or more Towns have Common in the Fields within their Towns, which are open to the Fields of the neighbouring Towns, and the Cattle, put to uſe their Common there, eſcape into the Fields of the neighbouring Towns, *& e contra.* 4 *Co.* 38. *b.*

And therefore, this Common is but an Excuſe for a Treſpaſs. *Co. L.* 122. *a.* 4 *Co.* 38. *b.*

So, where ſeveral Perſons have Lands intermixt in an open Field, and put their Cattle at *Shack, viz.* at large, to depaſture there, which cannot be without treſ-

treſpaſſing the one upon the other; this is in the Nature of Common *pur Cauſe de Vicinage.* 7 *Co.* 5. *a.*

And if any one incloſes, and after the Incloſure the others have uſed after Harveſt to open his Gates, and to intercommon there, the Uſage determines the Right, and the Owner who incloſed cannot exclude the others. 7 *Co.* 5. *Vide Infra.*

Tho' he refuſes to intercommon with them. 7 *Co.* 5.

When there is Common *pur Cauſe de Vicinage*, one Commoner cannot put his Cattle into the Lands of another Vill, or Manor, *&c.* but into his own Lands only, and they muſt eſcape into the other. *Co. L.* 122. *a.* 4 *Co.* 38. *b.*

And if one Vill or Manor has 100 Acres, and the other only 50, the latter can uſe the Common only with Cattle proportionable to the 50 Acres. 7 *Co.* 5. *b.*

And he can uſe it only for Cattle *levant* and *couchant* within his Tenement or Vill; for it is in the Nature of a Common Appendant.

And therefore it ought to be claimed from Time whereof, *&c.* as Common Appendant, tho' it be not ſo. *Per Wray*, 4 *Co.* 38. *a.*

If Common be allowed *pur Cauſe de Vicinage*, the one Lord of the Manor or Vill may incloſe, and ouſt the others of Common there. *Co. L.* 122. *a. R.* 4 *Co.* 38. *b.*

So, if the Owner of Land, where there is *Shack*, incloſes, he ſhall hold in Severalty, where by Uſage the Incloſers there have done ſo. 7 *Co.* 5. *b.*

If ſeveral Freeholders, who have Lands in a Common Field, intercommon, one of them cannot preſcribe to incloſe againſt the others. *Adm.* 2 *Mod.* 105. *Vide ſupra.*

(F) Common; How it ſhall be uſed.

(F. 1.) When it excludes the Owner.

IF Tenants of a Manor have Common in the Waſtes, they cannot exclude the Lord; for he by Common Right may put in his Cattle. *Co. L.* 122. *a.* 1 *Rol.* 396. *l.* 10.

So a Grantee of Common cannot exclude the Owner. 1 *Rol.* 396. *l.* 13. 399. *l.* 2.

Tho' the Grantee has Common *ſans Nombre*. 1 *Rol.* 396. *l.* 13. *Co. L.* 122. *a.*

Nor Tenants, who claim Common of *Eſtovers*. 2 *Cro.* 256, 7.

And they cannot preſcribe to exclude the Owner of the Soil; for the Word, *Common*, imports it. *Co. L.* 122. *a.* 2 *Rol.* 267. *l.* 30.

If the Owner of the Soil aliens, ſaving his Common; he may afterwards depaſture there. 1 *Rol.* 396. *l.* 25.

And if there was not any Saving, the Alienee ſhall have Common. 1 *Rol.* 396. *l.* 30.

But the Lord or Owner of the Soil, by Cuſtom, may be reſtrained to two or three Beaſts. *Cont.* 2 *Rol.* 267. *l.* 26. *R. Yel.* 129.

Or, he may be reſtrained to a certain Time.

So the Tenants of a Manor may preſcribe, that after the Graſs is mowed and put in Cocks, the Lord only ſhall put in his Cattle till *Michaelmas*, and then the Tenants only till *Lady-day*. *Per Brampſton*, 2 *Rol.* 267. *l.* 10.

So a Man may preſcribe, or alledge a Cuſtom, to have the ſole or ſeveral *veſturam Terræ*, or *paſturam Terræ*, and exclude the Owner of the Soil. *Co. L.* 122. *a.*

So the Copyholders of a Manor may alledge a Cuſtom to have the ſole Paſturage in ſuch a Place, and to exclude their Lord; for ſuch Uſage may have had a good Commencement. *R.* 2 *Sand.* 326. 2 *Lev.* 2. *Pol.* 13. 1 *Mod.* 74.

So the Freeholders may preſcribe, that they, with the cuſtomary Tenants, and the Copyholders may alledge a Cuſtom, that they, with the Freeholders, have the ſole Paſturage. *Semb.* 1 *Sand.* 352. *Dub.* 3 *Mod.* 250.

So a Tenant may preſcribe to have all Thorns, *&c.* growing upon ſuch a Place; by which the Owner ſhall be excluded. *R.* 2 *Cro.* 256, 7.

[By *St.* 13 *G.* 3. *c.* 81. Arable in common Fields ſhall be ordered as Three-fourths in Number and Value of Occupiers direct for ſix Years. Cottager or Commoner without Land is not excluded his full Right, unleſs he conſents in Writing for an annual Payment. If Occupiers agree not to depaſture in Common, and allot what ſhall be ſuch Common for Cottagers only, as ſhall be deemed an Equivalent by a Majority of them who have not compounded, they ſhall not have Common on the other Part. Perſon having ſeparate Sheep-walk, or Paſture for Cattle, not excluded from his Right, unleſs he conſents.]

[Balks, *&c.* may be ploughed with Conſent of Lord of Manor, and Three-fourths of Occupiers, except where it is a Road. Boundary-ſtones ſhall be erected.]

[Lords and three-fourths of Commoners may let one-twelfth Part of Waſtes for four Years, the Rents to be employed in improving the Reſidue.]

[Or Aſſeſſment may be levied for improving ſtinted Commons, as Lord and Majority of Occupiers direct.]

[Majority, with Lord's Conſent, may poſtpone opening Commons, ſtinted as to Time for twenty-one Days.]

[Two-thirds of Commoners, with Lord's Conſent, may open and ſhut Common Paſtures, but a Portion ſhall be reſerved for thoſe diſſenting.]

[Stinted Right of Common for Horſes, *&c.* may, by Majority of Commoners, be commuted for Sheep.]

[Rams muſt not remain on Commons, from 25th *Auguſt* to 25th *November*.]

[Perſons otherwiſe diſabled may agree under this Act.]

[Tithe-Owners ſhall receive no Gratuity for Tithes, but by Half-yearly or yearly Payments.]

[The Conſent of Occupiers is not valid, without an Authority from Proprietor.]

(F. 2.) With what Cattle.

Common Appendant, or Appurtenant for Cattle *levant* and *couchant*, may be uſed with Cattle which he hires or borrows to plow, or manure his Land: for they are his Cattle. 1 *Rol.* 402. *l.* 39, 401. *l.* 39.

And which yield Nurture for his Family. 1 *Rol.* 401. *l.* 43.

So, with Rabbits, or other Beaſts of Warren, as well as other Cattle. *R. Lut.* 108.

Common in a Foreſt may be uſed with Sheep. *Lut.* 81. *Vide in Chaſe.* (O, 3, 4.)

Tho' it be in the Fence Month. *Lut.* 81. If he preſcribes for it. *Pol.* 447.

But he who has Common Appendant, or Appurtenant for Cattle *levant* and *couchant*, cannot uſe the Common with the Cattle of a Stranger. 1 *Rol.* 402. *l.* 34. 2 *Sand.* 327. *Semb. Lut.* 107.

Nor can he licenſe his Tenants at Will to put their Cattle there. 1 *Rol.* 402. *l.* 36.

Nor can he uſe the Common with Cattle which he agiſts. 1 *Rol.* 402. *l.* 34.

Or, which he has to ſell. 1 *Rol.* 401. *l.* 46.

Nor can he grant over his Common to another; for it is for Cattle *levant*. *R.* 2 *Cro.* 15.

So, he, who has Common in Groſs *ſans Nombre*, cannot licenſe a Stranger to put Cattle there. 2 *Sand.* 327.

Yet he who has Common for a certain Number of Cattle may put in the Cattle of a Stranger. 1 *Rol.* 402. *l.* 43. *Cont. l.* 34. *Dub.* 2 *Cro.* 575.

So he, who has the ſole Paſture may licenſe a Stranger to put his Cattle there. *R.* 2 *Saud.* 327. 2 *Lev.* 2. *Pol.* 13. 1 *Mod.* 74.

And a Licence *pro hac vice* may be by *Parol.* 2 *Lev.* 2. *Cont. Semb.* 2 *Sand.* 328.

So

So he may uſe it for Cattle not *levant* and *couchant*. *R.* 2 *Lev.* 2.

Yet after a Verdict a Licence ſhall be intended by Deed, tho' not pleaded. *R.* 2 *Sand.* 328.

(G) When the Lord may improve it.

THE Lord could not improve the Land where others have Common by the Common Law. 2 *Inſt.* 85. *viz.* againſt others who have Common by Grant; but againſt his Tenants it was otherwiſe. 2 *Inſt.* 474. 1 *Rol.* 365.

But now, by the *St. of Merton*, 20 *H.* 3. 4. the Lord may improve, leaving ſufficient Paſture, Ingreſs, and Egreſs for his Tenants.

And by the *St. W.* 2. 13 *Ed.* 1. 46. the *St.* of *Merton*, which extends to the Lord and his Tenants, ſhall hold between the Lord and others who have Common.

And therefore, the Lord may improve his Waſtes againſt thoſe who have Common Appendant, or Appurtenant for Cattle *levant* and *couchant* upon their Tenements.

So, if the Lord has Common in the Lands of the Tenant, the Tenant may improve. 2 *Inſt.* 474.

So, if the Lord aliens the Soil, where the Common was taken, the Alienee may improve. 2 *Inſt.* 87.

The Lord may improve *toties quoties*, if there be ſufficient Common left for his Tenants. *Ibid.*

And, if it be ſufficient at the Time of the Improvement, tho' it afterwards appears to be inſufficient, the Improvement ſtands. *Ibid.*

If the Lord makes a Feoffment of Part of the Waſte, the Feoffee may incloſe; for the Feoffment is an Improvement. *Ibid.*

By the *St. W.* 2. 46. None ſhall be aggrieved by an Aſſiſe of Common of Paſture, by reaſon of Windmill, Berkery, (*viz.* Sheep or Tan-houſe,) Cow-houſe, neceſſary Augmentation of his Court-yard or Curtilage. 2 *Inſt.* 476.

And for theſe Improvements the Lord, *&c.* ſhall not be aggrieved, tho' ſufficient Common be not left. 2 *Inſt.* 476. *Dub.* 1 *Lev.* 62.

And theſe Inſtances are only for Example; for the Statute extends by Equity, where the Lord builds an Habitation for his Beaſt-keeper. 2 *Inſt.* 476.

Where he builds a new Houſe for his own Habitation, and enlarges the Curtilage. *Semb.* 1 *Lev.* 62. 1 *Sid.* 79.

But he ought to ſay, that it was for his Habitation, and that it was neceſſary. *R.* 1 *Lev.* 62. 1 *Sid.* 79.

If the Lord improves and incloſes, and the Fences are thrown down by Perſons unknown, by the *St. W.* 2. 46. the Towns adjacent, if they do not indict the Miſdoers, ſhall be diſtrained to repair the ſame Fences. 2 *Inſt.* 476.

If they be thrown down by Night or by Day, if the Perſons be not known. *Lut.* 157.

And this, if the Miſdoers are not indicted within a Year and a Day. 2 *Inſt.* 476. *Lut.* 158. 1 *Rol.* 365. *Dict.* that a *Diſtringas* lies if the Miſdoers are not indicted within a convenient Time, tho' the Year be not paſſed. *Cro. Car.* 440.

And therefore, a Writ ſhall go to the Sheriff to inquire what Malefactors threw down the Fences, and if he returns, that it was by Perſons unknown, a *Diſtringas* goes againſt the Inhabitants of the next Towns, and to inquire of the Damages. *Lut.* 141, 170. *Cro. Car.* 280, 440.

But a *Diſtringas* does not go for cutting down Trees, if the Fences are not thrown down. *R. Ray.* 487.

The Writ need not ſhew a Title to improve. *R. Cro. Car.* 280.

And it lies for the Owner of the Waſte. *Sho.* 106.

For the Grantee of the Common. *Sho.* 106.

[The Proceedings upon a *Noctanter* muſt be of the Crown Side in *B. R. Rex* v. *Sudbury*, *H.* 11 *G. Str.*]

At the Return of the *Diſtringas*, the Inhabitants may appear and plead to it; for the *Diſtringas* contains a *Scire facias*. *Lut.* 157. *R.* 1 *Sid.* 107.

And therefore, there is no Occaſion for a *Scire facias* after the *Diſtringas*. *Lut.* 157.

And the Inhabitants may plead, that the Perſons were known. *Lut.* 175, 176. *R.* 1 *Lev.* 108.

That the Damages are exceſſive. *Lut.* 147, 177. *R.* 1 *Sid.* 212. 1 *Mod.* 66.

Or any Matter, which excuſes the throwing down of the Fences. *Lut.* 144, 176.

That the Miſdoers are indicted. *Cro. Car.* 440.

And ſome Inhabitants may plead one Plea, and the Inhabitants of another Vill, another Plea. *Lut.* 176.

So two of every Vill may plead for all. 1 *Lev.* 108.

If the Vills plead to the Damages, there ſhall not be Judgment for the Erection of the Incloſures till the Plea be determined. 1 *Mod.* 66.

But if the Vills do not plead to the Exceſſiveneſs of the Damages, they ſhall be bound by them, tho' the Jury afterwards find leſs Damages. *R.* 1 *Sid.* 212.

And if at firſt they do not take Proteſtation to the Damages, they cannot afterwards traverſe. *Ibid.*

And if they do not come at the Return of the *Diſtringas*, they cannot afterwards plead. *Semb. Cro. Car.* 280.

If the Vills do not plead, another *Diſtringas* goes to levy the Damages found. *Cro. Car.* 280. *Jon.* 306.

But the Lord cannot improve againſt him, who has Common in Groſs *ſans Nombre*. 2 *Inſt.* 86.

Nor when he has Common in Groſs, tho' it be for a certain Number. 2 *Inſt.* 86, 475. *Semb.* 1 *Rol.* 365.

So the Lord cannot improve, where the Tenant has Common of *Turbary*, *Piſcary*, *Eſtovers*, *&c.* 2 *Inſt.* 87.

So the Lord cannot, upon Pretence of an Improvement, dig Pits for Coals, *&c.* 1 *Sid.* 106.

So the Lord cannot improve, without leaving ſufficient Common.

Tho' he aſſigns ſufficient in other Lands. 2 *Co.* 25.

Tho' he alledges a Preſcription to improve; for that denies the Right of Common. *R. Jon.* 375.

If the Lord improves, and does not leave ſufficient Common, the Commoner may throw down the whole Incloſure; for it ſtands upon his Common. 2 *Inſt.* 88.

But in an Aſſiſe in ſuch Caſe, the Jury cannot find generally for the Plaintiff, but ought to aſſign, how much ſhall be ſufficient. *Ibid.*

[By *ſtat.* 29 *G.* 2. *c.* 36. Owners of Common, with Conſent of Majority in Number and Value of Commoners; Majority of Commoners, with Conſent of Owners; any Perſons with Conſent of both, may incloſe any Part of Common for Growth of Wood. If Wood is deſtroyed, Offender may be puniſhed according to 1 & 6 *G.* 1.; if not convicted in ſix Months, the Owner ſhall have Satisfaction from the adjoining Pariſhes, *&c.* as for Fences overthrown by *ſtat. Weſtm.* 2. Perſon cutting Wood on Common ſhall incur the ſame Penalty.]

[By *ſtat.* 31 *G.* 2. *c.* 41. The Recompence is to be paid to Perſons intereſted, in Proportion to their Intereſt. Tenants for Life or Years determinable on Lives, may conſent for their Term, but that binds not after Determination of their Eſtate.]

(H) What Intereſt the Commoner has.

THE Commoner has no Intereſt in the Soil where he takes his Common; and therefore, he cannot meddle with the Soil to dig there, *&c.* *Bridg.* 10.

He cannot take Wood, Hay, or other Profit there growing. 2 *Leo.* 202. *Bridg*, 10.

He

He cannot cut down Buſhes, Fern, &c. without ſpecial Cuſtom; tho' they prejudice his Common. *Bridg.* 10.

[A Commoner, tho' he has by Cuſtom a Right to cut Fern, may not ſcatter the Aſhes which a Stranger has made by cutting and burning it. *Woadſon* v *Nawton*, T. 13 G. *Str.* 477.]

Nor grant his Common to the Uſe of another. *Bridg.* 10.

Nor make a Trench to let out Water which ſurrounds it. 1 *Rol.* 406. *l.* 17. *Semb.* 12 *H.* 8. 2. 15.

Nor ſtop up Coney-borows; tho' his Cattle fall and periſh in them. 1 *Rol.* 405. *l.* 25. 2 *Bul.* 116.

[Even if the Common is ſurcharged, but muſt bring his Action. *Cooper* v. *Marſhal*, P. 30 G. 2. 1 *B. M.* 259. *Cope* v. *Marſhal*, P. 30. G. 2. 1 *B. M.* 268. 2 *Wilſ.* 51.]

Nor kill the Rabbits. *R.* 1 *Rol.* 405. *l.* 15. 20. 2 *Leo.* 201. 2 *Bul.* 116.

Tho' he alledge a Cuſtom, or Preſcription to do it. *Semb. Bridg.* 10.

He cannot enter upon the Soil, when he does not put his Cattle there. 1 *Rol.* 406. *l.* 8.

Nor agiſt the Cattle of a Stranger there. 2 *Leo.* 202.

He cannot maintain Treſpaſs for Damage to the Soil, or Graſs; for, he has no Intereſt, but to take the Paſture by the Mouths of his Cattle. 12 *H.* 8. 2. 2 *Rol.* 552. *l.* 7.

Nor, an Action upon the Caſe againſt a Stranger, if his Rabbits go upon the Common; for he may kill them. *R. Cro. Car.* 387. 1 *Rol.* 405. *l.* 39.

But a Commoner may juſtify his Entry, to put his Cattle upon the Common.

Or, to ſee whether the Graſs be good, for the depaſturing of his Cattle. 1 *Rol.* 406. *l.* 10.

So he may reform an Abuſe to the Soil; as, he may dig down Mole-Hills. 1 *Brownl.* 228. 12 *H.* 8. 2.

Fill up with Earth Holes dug there. 1 *Brownl.* 228.

Let out Water from a Pond made there by the Lord. *Ibid.*

Make a Cauſway for Cattle to come there. *Per Pollard*, 12 *H.* 8. 2.

So he may throw down Incloſures, which prevent his coming to his Common. *Semb.* 2 *Inſt.* 88. *Bridg.* 10.

Put in his Cattle, tho' the Owner has ſowed the Land. 2 *Leo.* 202.

Throw down the Incloſure of the Common, tho' he do not put his Cattle there at the ſame Time. *R. Litt.* 38.

So he may throw down Fences, which are erected upon his Common. *R.* 2 *Mod.* 65.

So he may diſtrain the Cattle of a Stranger there *Damage-feaſant*. 1 *Rol.* 405. *l.* 42. *Adm. Yel.* 129. 2 *Leo.* 202.

Or drive them out with a little Dog; without being compelled to diſtrain. *R.* 4 *Co.* 38. *b.*

So, if the Lord, by Cuſtom, be reſtrained to a ſmall Number of Cattle, and he puts more there; they may be diſtrained by him who has Common. *Per* 3 *J. Yel.* 129.

So, if the Lord put in his Cattle before the Time for Common, when by the Cuſtom it ſhould be freſh. *R.* 1 *Rol.* 405. *l.* 55.

[Wherever there is Colour of Right for putting in Cattle, Commoner cannot diſtrain, where no Colour he may, ſo he may diſtrain a Stranger's Cattle, but not thoſe of a Commoner tho' he exceeds his Number. Where Writ of Admeaſurement lies he cannot diſtrain. Whether he may diſtrain Cattle ſurcharged where the Right of Common is for a Number certain Q. *Hall* v. *Harding*, P. 9 G. 3. 4 *B. M.* 2426.]

So a Commoner ſhall have an Action upon the Caſe againſt him, who prejudices his Common, an Aſſiſe, or a *Quod permittat*. *Bridg.* 10. *Vide Poſt*, (I.)

Tho' the Prejudice to the Common be by digging Clay, and laying and carrying it acroſs the Common; tho' he has no Intereſt in the Clay or Soil. *R. Godb.* 344. 2 *Rol.* 308, 344.

Tho' the Defendant himſelf has Common there. *R. Godb.* 344.

But if a Commoner avows a Diſtreſs for *Damage-feaſant*, he ought to alledge, *quod Communiam tam amplo modo habere non poteſt.* *R.* 3 *Lev.* 104.

Vide Poſt, (I.)

(I) What Remedy the Commoner ſhall have.

An Aſſiſe, &c.

IF the Commoner has an Inheritance, or Eſtate for Life, in his Common, and is diſſeiſed, he ſhall have an Aſſiſe. *F. N. B.* 180. *L.* *Vide Aſſiſe*, (B. 2.)

Tho' the Lord himſelf diſſeiſes him; as, if he ſur-charges the Common, or approves, and does not leave ſufficient for the Commoner. *F. N. B.* 125. *D.*

So, if the Commoner be diſſeiſed, he may have a *Quod permittat* in the County, or *C. B.* *F. N. B.* 123. *F.* *Vide quod permittat.*

Or, if his Anceſtor was diſſeiſed; but not in other Degrees. *F. N. B.* 123. *H.*

So, if Tenant in *Antient Demeſne* be deforced of his Common, he may have a Writ of Right Cloſe for it. *F. N. B.* 11. *K.*

If a Commoner ſur-charges the Common, another Commoner may have a Writ of Admeaſurement of Paſture, whereby the Number of the Cattle with which the Defendant, the Plaintiff, and other Commoners, who are not Parties, may common, ſhall be aſcertained. *F. N. B.* 125. *B.* 126. *H.*

And this Writ is *Viſcontiel*, and not returnable; upon which the Plaintiff ſhall make Plaint in the County-Court, as in *Replevin*; and the Sheriff by Precept, ſhall warn the Defendant; and if he pleads nothing, or confeſſes it, he ſhall make Admeaſurement. *F. N. B.* 125. *C. G.*

And upon this ſhall go an *Alias* and *Pluries*, and if nothing be done upon it, nor Cauſe ſhewn, an Attachment againſt the Sheriff. *F. N. B.* 125. *F.*

Or it may be removed by *Pone* into *C. B.* where the Plaintiff ſhall count, and have Admeaſurement. *F. N. B.* 125. *F.* 126. *A.*

By the *St. W.* 2. 7. After Removal into *C. B.* a *Diſtringas* goes to make Proclamation at two County-Courts, and upon Default, Judgment. *F. N. B.* 125. *G.* 126. *C.* 2 *Inſt.* 368.

By *W.* 2. 8. If the Defendant in Admeaſurement of Paſture, afterwards ſur-charges, a Writ of *De ſecunda Superoneratione* lies; upon which he ſhall render Damages, and forfeit the Cattle ſur-charged to the King. 2 *Inſt.* 370. *F. N. B.* 126. *E.*

But the Writ of Admeaſurement of Paſture does not lie by the Lord; nor by Tenant againſt the Lord, nor for Common *ſans Nombre*. *F. N. B.* 125. *D.*

So, if a Commoner be diſturbed, whereby he cannot uſe his Common, or cannot uſe it in *tam amplo modo*, he may have an Action upon the Caſe. 9 *Co.* 112. *b.* *Vide Action upon the Caſe for a Diſturbance*, (A. 1.)

So, if the Lord, or a Commoner, ſur-charges the Common, whereby the Plaintiff has not ſufficient Common, an Action on the Caſe lies. *Lut.* 107. *Atkinſon* v. *Teaſdale*, *P.* 12 *G.* 3. 3 *Wilſ.* 278.

So, if the Lord, or another, drives his Cattle out of the Common. *Lut.* 103.

If a Man claims Common, where he has no Right, the Owner ſeiſed in Fee ſhall have a *Quo Jure*. *Vide Quo Jure.*

[If Plaintiff claiming Right to cut Ruſhes on a Common cuts ſome which Defendant takes away, Trover lies. *Rackham* v. *Jeſup*. *M.* 13 *G.* 3. 3 *Wilſ.* 332.]

[Againſt a Stranger for cutting and taking away Ruſhes. Treſpaſs and Trover in one Declaration. *Beau* v. *Bloom*, *M.* 14 *G.* 3. 3 *Wilſ.* 456.]

Vide Ante, (H.)

(K) What Remedy the Lord ſhall have.

SO, if the Lord has Prejudice in his Soil where the Common is, he ſhall have Remedy by Action, as in his other Lands.

[In Treſpaſs by the Lord againſt a Commoner, for deſtroying his Peat and filling

filling up the Holes, if Defendant juſtifies under Common appendant to his Houſe, that Plaintiff had dug Holes, and laid up Heaps, whereby he could not enjoy *tam amplo, &c.* therefore juſtifies removing Heaps, and filling Holes, doing as little Damage as poſſible; and Plaintiff replies *de injuria ſua propria abſque tali, &c.*: Sufficiency of Common left cannot be given in Evidence. *D'Ayrolles* v. *Howard, P.* 3 *G.* 3. 3 *B. M.* 1385.]

If the Cattle of a Stranger are in the Common, he may drive them out, or impound them. 3 *Lev.* 41.

Or maintain Treſpaſs.

So, if the Lord ſees the Cattle of a Stranger, he may drive the Cattle of a Commoner with them to Pound upon the Waſte, in order to ſever them, without a Cuſtom for doing it. *R.* 3 *Lev.* 41.

So, by Cuſtom, he may drive the Cattle of a Commoner, to ſee whether the Cattle of a Stranger be there, or whether the Common be fur-charged; but not without a Cuſtom alledged. 3 *Lev.* 41. 2 *Lev.* 87.

And if the Common be ſur-charged, he may detain the Cattle driven, till Satisfaction for the Treſpaſs, without a Preſcription for it. *R.* 2 *Lev.* 87.

If the Tenant himſelf ſur-charges the Common, the Lord may diſtrain the Beaſts, as *Damage-feaſant*. *F. N. B.* 125. *D.*

So, if the Tenant puts in Cattle not *levant* and *couchant*, where he has Common only for Cattle *levant* and *couchant*. 2 *Rol.* 706. *l.* 50.

Or the Lord ſhall have Treſpaſs againſt his Tenant.

But if the Lord ſets up a Stack of Corn, *&c.* upon the Common he cannot drive away the Cattle which have Common there; for it was his own Fault. *R.* 2 *Cro.* 271.

(L) How Common ſhall be extinguiſhed.

IF a Man purchaſes Land where his Common is to be taken, whereby he has as high an Eſtate in the Land in which, *&c.* as in the Land to which the Common is Appendant or Appurtenant, the Common ſhall be extinguiſhed. *R.* 4 *Co.* 38. *a.* *R. Cro. El.* 570. *Mo.* 462, 3. *Vide Suſpenſion*, (B. *&c.*)

So, if a Copyhold to which Common belongs, is deſtroyed, the Common is gone. *Vide Copyhold*, (K. 6.)

So, if he, who has Common Appurtenant, purchaſes Parcel of the Land in which, *&c.* the Whole ſhall be extinguiſhed. *Co. L.* 122. *a.* *R.* 8 *Co.* 79, *R.* 1 *And.* 159.

So, if he, who has Common in Groſs, *&c.* *Co. L.* 122. *a.*

But if a Man, who has Common Appendant, purchaſes Part of the Land in which, *&c.* it ſhall be apportioned; for it is of common Right. *Co. L.* 122. *a.* *R.* 4 *Co.* 38. *a.* *R. Mo.* 463, 644. 8 *Co.* 79. *a.*

And he ought to preſcribe for the Whole till ſuch a Day when he purchaſed, *&c.* 4 *Co.* 38.

So, if a Man, who has Common Appurtenant, ſells Parcel of the Land to which, *&c.* it ſhall be apportioned. *Co. L.* 122. *a.* *R.* 8 *Co.* 79.

And the Alienee may preſcribe as for Common Appurtenant to his Parcel. 8 *Co.* 79.

Or, if Common be for a certain Number, the Owner may ſell all his Common with Parcel of his Land to which, *&c.* and the Whole ſhall be Appurtenant to that Parcel. *R.* 1 *Rol.* 402. *l.* 15. *Cro. Car.* 432.

Yet, if a Commoner purchaſes the improved Part of the Waſte, his Common ſhall not be extinguiſhed; for by the Approvement it was wholly ſevered from the Manor. 2 *Inſt.* 87.

(M) How ſuſpended.

SO, if a Commoner who has Common Appurtenant, takes a Leaſe of Part of the Land in which, *&c.* for Life or Years; all his Common ſhall be ſuſpended during the Term. *R.* 8 *Co.* 79. *a.*

Vide Suſpenſion.

(N) When it is not destroyed.

IF all the Inhabitants of a Vill have Common in such a Place, and the antient Messuage of any of them falls, and a new one is built upon the same Foundation, the Common remains. *R.* 2 *Leo.* 45.

Or, if he builds a new House in the same Place. 2 *Leo.* 45. *Godb.* 97.

But if the Inhabitants of a Vill claim Common, and any one builds a new Messuage there, where there was none before, he shall not have Common; for it belongs only to the antient Inhabitants. *R.* 2 *Leo.* 44.

(O.) When revived by a new Grant.

IF a Common be extinguished by Unity of Possession, if a Lease be made of the Land to which, *&c. with all Commons therewith used, or enjoyed*; that amounts to a new Grant of the Common for Years, if there be an Averment that it was used. *R. Cro. El.* 570.

Vide more concerning Common in *Copyhold*, (K. 6.)—*Chancery*, (2 P.)—*Pleader*, (3 K. 24.)

Tenant and Tenancy in Common.

Vide Abatement, (E. 10.—F. 6.)—*Chancery*, (3 V. 4, &c.)—*Devise*, (N. 8.)—*Estates*, (K. 8.)

COMMON ANNOYANCE.

Vide Justices of Peace, (B. 24, &c).—*Leet*, (L. 12, 13.)

COMMON BENCH.

Vide Courts (C. 1, &c.)—*Pleader* (C. 4, 11, &c.—3 B. 2.—*Quod permittat*, (D. 2)

COMMON COUNCIL.

Vide Franchises, (F. 25.)—*London*, (F.)

COMMON LAW.

Vide Chancery, (C. 1.—D. 9.—X.—4 V.)—*Copyhold*, (K. 4.—P. 3.)—*Ley*, (B.)—*Parliament*, (R. 12, 23, 27.)—*Prohibition*, (F. 10.—G. 22, *Trade*. (A. 6, 7.)

COMMON RECOVERY.

Vide Chancery, (4 K. 1, 2,)—*Estates*, (B. 27, &c.—*Execution*, (A. 6.)—*Recovery*, (B. 1, &c.)

COMMONS:

Vide Parliament, (D. 4.—G. 10.—L. 14, &c.)—*Scotland*, (D. 5.)

COMPERUIT AD DIEM.

Vide Pleader, (2 W. 31.)

COMPOSITION.

Vide Diſmes, (E. 8, 21.—L. 2.)—*Pleader*, (2 G. 6.)

CONCEALED LANDS.

Vide Prærogative, (D. 65.)

CONCLUSION.

Vide Abatement, (E. 16.)—*Eſtoppel.*—*Pleader*, (C. 84. E. 28, &c. —F. 5.—S. 35, &c.)

CONCORD.

Vide Accord.—*Fine*, E. 9, &c.)

CONDITION.

(A. 1.) Condition in Deed.

A Man may annex to an Eſtate a Condition, by the Performance or Non-performance of which the Eſtate may commence, or may be enlarged, or defeated. *Co. L.* 201.

And this may be by expreſs Words in the Deed, or by Implication of Law. *Ibid.*

An expreſs Condition cannot be without Deed. *Co. L.* 225.

And therefore, a Man cannot plead a Condition to defeat an Eſtate of Freehold, without ſhewing the Deed. *Co. L.* 225. *Vide Pleader*, (O. 1, &c.)

Otherwiſe, where a Condition is annexed to a Chattel Perſonal or Real; as a Term for Years, Ward, *&c.* 1 *Rol.* 413. *l.* 20, 25.

So a Condition to a Freehold may be referred to a Matter not in Writing, and may be ſupplied by Averment:

As, if a Corrody be granted for Life, *ſec. quod per A. prius uſitat. fuit*; it may be averred, that the Corrody of *A.* was upon Condition to attend the Maſter, *&c.* 1 *Rol.* 413. *l.* 50.

If an Annuity be granted *pro Conſilio* generally, it may be averred, that the Grantee was learned in the Law, and the Annuity was for his Counſel in the Law. 1 *Rol.* 413. *l.* 52.

So a Condition precedent, upon which an Eſtate ſhall be created, may be without Deed. *Co. L.* 216. *a.*

(A. 2.) By what Words it ſhall be created.

(A. 2.) In the Grants of a common Perſon. *Vide Poſt*, (A. 9, 10.)

Divers Words of themſelves make an Eſtate upon Condition. *Lit. S.* 328.

As, *ſub Conditione*. *Lit. S.* 328. 10 *Co.* 42. *a.*

Proviſo Semper. *Lit. S.* 329.

And the Word, *Proviſo*, makes a Condition tho' joined with other Words; as, *Provided always, and it is covenanted*. *Co. L.* 203. *b.* 2 *Co.* 71. *b.* 1 *Rol.* 410. *l.* 30.

Provided, and it is agreed, &c. 2 *Co.* 71. *b.* *R. Cro. Car.* 128.

And therefore, if the Word *Proviſo*, be the Speaking of the Grantor, Feoffor, Donor, *&c.* and obliges the Grantee, *&c.* to any Act, it makes a Condition, in whatever Part of the Deed it ſtands; and tho' there be Covenants before or after, it is not material. *R. By all the Judges*, 2 *Co.* 70, 71, *&c. Cromwell. R. Dy.* 311. *b.* *Per* 2 *J. Dy.* 13. *b.*

So, tho' it ſtands indifferent, whether it be the Word of the Leſſor or the Leſſee; as, *Provided, and it is agreed between the ſaid Parties*; for it ſhall be referred to the Leſſor. 1 *Rol.* 407. *l.* 50. *Dub. Dy.* 152. *Acc. Dy.* 6. *b.*

And, tho' all the Reſidue of the Words be the Speaking of the Grantee, and Words of Covenant, as, *Provided, and the Grantee covenants, &c.* *R.* 2 *Co* 71. *b.* *R. Mo.* 707. *R. Jon.* 169.

So Words of Limitation, if they cannot be taken as a Limitation, ſhall be taken for a Condition. *Eq. Abr.* 105.

Otherwiſe, if the Word, *Proviſo*, be annexed only to make a Qualification, and not to defeat the Eſtate. *Mo.* 307. 2 *Co.* 72. *a.* *Mo.* 707.

[Proviſo, if Leſſee commit Waſte the Leaſe ſhall determine; is a Condition, not a Covenant. *Birchall* v. *Smethurſt*, *T.* 1722. *Bunb.* 114.]

So the Words, *Ita quod*, make a Condition of themſelves. *Lit. S.* 329.

And, *quod ſi contingat*. *Lit. S.* 330.

But not without a Concluſion, that it ſhall be lawful to the Leſſor to re-enter. *Lit. S.* 331. *Pol.* 75.

So other Words make a Condition, if there be added a Concluſion with a Clauſe of Re-entry: As, *If*. *Co. L.* 204. *a.*

Or, tho' the Concluſion does not give a Re-enty, but ſays only, *that if the Feoffee, &c. doth*, or *doth not, ſuch an Act, the Eſtate ſhall ceaſe*, or, *ſhall be void*. *R.* 1 *Rol.* 408. *l.* 15.

Or, *that the Feoffment ſhall be void*. *R.* 1 *Rol.* 408. *l.* 20, 25.

Or, *that the Deed of Feoffment and Livery ſhall be void*; for that is of the ſame Effect as if he had ſaid *the Feoffment*. *Dub.* 2 *Rol.* 408. *l.* 30.

So, if after the Feoffment, the Feoffee by another Deed grants, *that if he doth not ſuch an Act, the firſt Deed ſhall be void*. 1 *Rol.* 408. *l.* 38.

So, if the Concluſion be, *that the Feoffor ſhall take back his Eſtate*. 1 *Rol.* 408. *l.* 50.

So, *eâ Intentione*, with a Clauſe of Re-entry, makes a Condition. *Semb.* 1 *Rol.* 407. *l.* 37. *Dy.* 138. *b.*

So, to avoid a Leaſe for Years, which is but a Chattel, there is no need of ſuch preciſe Words as to avoid an Eſtate of Freehold. *Co. L.* 204. *a.*

And therefore, if the Leſſor ſays, *quod non licebit for the Leſſee to ſell, grant, &c. ſub pœnâ Forisfacturæ*, that makes a Condition. *R. Dy.* 65, 6. *Co. L.* 204. *a.* Or ſays, *and the Leſſee ſhall dwell on the Premiſſes on Pain, &c.* *Co. L.* 204. *a.* *Dy.* 79. *a.*

So, if the Leſſee covenants *that he will, &c. ſub pœnâ Forisfacturæ*. 1 *Rol.* 408. *D.*—*Semb. Cro. El.* 202. *R.* 2 *Cro.* 398. 1 *Leo.* 246.

So in Grants executory, the Cauſe, or Conſideration of the Grant makes a Condition. *Co. L.* 204. *a.* 10 *Co.* 42. *a.* 1 *Sand.* 320. 2 *Sand.* 352.

As, if a Man grants an Annuity *pro Acrâ Terræ*, or *pro Decimis*, which are evicted, the Annuity ceaſes. *Co. L.* 204. *a.*

Or, *pro Conſilio*, or *quod præſtaret Conſilium*, if the Grantee refuſes his Counſel. *Co. L.* 204. *a.*

Other-

Otherwiſe, if a Man grants an Eſtate of Inheritance, or Freehold, *pro Conſilio*, or *pro Acrâ Terræ*, the Annuity does not ceaſe if the Counſel be refuſed, or the Land evicted. *Co. L.* 204. *a.*

Yet a Feoffment by a Woman *Cauſâ Matrimonii prælocuti* determines upon the Marriage, or if the Feoffee refuſes the Marriage. *Co. L.* 204. *a.*

Otherwiſe, if the Feoffment be by the Man to the Woman; for the Woman ſhall be favoured in reſpect of the Modeſty of her Sex, which does not permit her to take Counſel in ſuch a Caſe. *Co. L.* 204. *a.*

If a Condition has falſe *Latin*, yet if the Senſe may be known, it is good. 1 *Rol.* 413. *l.* 30.

(A. 3.) In the King's Grant.

So in the King's Grant, Words make a Condition, which do not make a Condition in the Deeds of a Common Perſon. *Co. L.* 204. *a.*

As, *ad Effectum*, or, *eâ Intentione*. *Ibid.*

So, *ad faciendum*, or, *faciendo*. *Ibid.*

Ad Propoſitum, &c. *Ibid.*

Ad ſolvendum. 10 *Co.* 42. *a.*

But, if at the End of a Charter, by which a Grant is made of an Advowſon, there be a Clauſe, *quod conceſſimus that the Grantee may amortiſe to a Chantry to ſing for the Souls of our Progenitors*; this does not amount to a Condition, but to a Licence. *R.* 43 *Ed.* 3, 33, 34. *Fitz. Condition* 7. 1 *Rol.* 407. *l.* 30.

(A. 4.) In a Will.

So Words in a Will make a Condition, which will not make it in a Deed: As, if a Man deviſes Land to another *ad faciendum*, or *eâ Intentione that he do ſuch a Thing*; this makes a Condition. *Co. L.* 204. *a.*

Vide Deviſe, (N. 9, 10, 11.)

So, if he deviſes to another *ad faciendum*, or, *ad propoſitum, that he do, &c. Co. L.* 204. *a.*

So, if he deviſes *to ſell.* 1 *Rol.* 401. *l.* 45. *Co. L.* 236. *b.*

Or, *ad ſolvendum*, or, *paying*. *Co. L.* 236. *b.* 1 *Leo.* 174. *R. Cro. El.* 146. *Mo.* 853.

So a Deviſe to *A. provided, and my Will is, that he keep it in Repair*, makes a Condition. *R.* 1 *Leo.* 174.

So there ſhall be a Condition in a Will, tho' there be no Words that the Eſtate ſhall ceaſe; as, a Deviſe to a Wife, *provided that ſhe ſhall have the Rent only if ſhe departs out of London. Per Cur. Cro. El.*

But if the Words be inſenſible, and the Intent uncertain, they ſhall not be conſtrued as a Condition.

A Deviſe to *A.* and his Heirs, *upon Truſt that he ſhall do, &c.* is a Truſt, but does not make a Condition. *R. Mo.* 594.

(A. 5.) In Obligations. *Vide Obligation*, (B. 1. E.)

So in Obligations there need not be ſuch preciſe Words; For, if the Words be, *The Condition is, that if* A. *do not grant, &c. the Obligor covenants that he will grant*; it is a good Condition. *R.* 1 *Rol.* 409. *l.* 10.

So if the Words be, *Now it is agreed that if* A. *pay, the Bond ſhall be void. R.* 1 *Rol.* 409. *l.* 15.

(A. 6.) What Words do not make a Condition.

But in Grants of a common Perſon, *ad faciendum, ad effectum, ad propoſitum*, or, *eâ Intentione*, do not make a Condition. *Co. L.* 204. *R. Dy.* 138. *b.*

So Words of Covenant or Grant of a Leſſee do not make a Condition. *Per* 2 *J. Dy.* 6. *a.*

So Words in Reſtraint of a Grant do not make a Condition; as, if the Leſſor grants *Fire-bote, provided that he do not take it of the great Trees*; it will be Waſte, but no Cauſe of Re-entry, if he does take it of the great Trees. *R.* 3 *Leo.* 16.

So Words inſenſible do not make a Condition: As, a Leaſe for forty Years, upon Condition *if ſhe lives ſo long, and keeps herſelf ſole*, without more, does not make a Condition; for the Intent is uncertain. *R.* 1 *Rol.* 411. *l.* 23. *Poph.* 99. *Cro. El.* 414.

Nor Words to a foreign Intent; as, if a Feoffment be to *A. & ſi contingat that he dies in the Life of the Feoffor, that he pay an Annuity to* B. *Per Pol.* 75.

Or, repugnant, or uncertain. *Pol.* 76.

(A. 7.) To what Eſtate it may be annexed.

A Condition may be annexed to an Eſtate of Inheritance, Freehold or for Years.

So it may be annexed to a Grant of Tithes by the Clergy. 1 *Rol.* 412. *l.* 53.

If a Feoffment be of two Acres, a Condition may be, that he ſhall re-enter into one. 1 *Rol.* 412. *l.* 50.

So it may be annexed to an Uſe, and ſhall be executed by *St.* 27 *H.* 8. ſo that the Donor and his Heirs may take Advantage of the Condition. *R. Sav.* 77.

(A. 8.) In what Conveyance.

A Condition may be annexed to a Deviſe, as well as to another Conveyance. 1 *Rol.* 412. *l.* 25.

And to a Deviſe ſince the *St.* 32 & 34 *H.* 8. as well as to a Deviſe by the Common Law. 1 *Rol.* 412. *l.* 27.

Or, to a Deviſe of an Uſe by the Common Law. 1 *Rol.* 412. *l.* 25. *Dy.* 127.

So a Leſſee may ſurrender to the Leſſor, upon Condition. 1 *Rol.* 412. *l.* 20.

And a Surrender of a Copyhold may be upon Condition. 1 *Rol.* 412. *l.* 17.

So a Releaſe of an Eſtate may be upon Condition.

And a Confirmation. 1 *Rol.* 412. *l.* 22.

And a Releaſe of a Right. *Co. L.* 274. *b.* 1 *Rol.* 412. *l.* 15.

So a Contract may be upon Condition. 1 *Rol.* 413. *l.* 4.

And a Charter of Pardon. *Co. L.* 274. *b.*

And a Grant of Denization. *Ibid.*

So a Releaſe of a perſonal Thing may be upon a Condition precedent, but not upon a Condition ſubſequent; for a perſonal Action once ſuſpended ſhall be extinguiſhed. *R.* 1 *Rol.* 412. *l.* 30, 35.

So, an Attornment. *Co. L.* 274. *b.* 2 *Co.* 68. *a.* *R.* 9 *Co.* 85. *b.* 1 *Rol.* 412. *l.* 45.

So, a Manumiſſion of a Villein. *Co. L.* 274. *b.*

But a Condition cannot be releaſed upon Condition; for the Condition annexed to the Releaſe ſhall be void, and the Releaſe ſhall be good. *Co. L.* 274. *b.*

(A. 9.) How it ſhall be annexed.

The Condition may be contained in the ſame Deed.

Or, indorſed upon the Obligation, or Deed. 1 *Rol.* 413. *l.* 10.

Or, may be contained in another Deed executed upon the ſame Day. 1 *Rol.* 414. *l.* 20.

So a Condition to defeat an Eſtate may be annexed to the Reſervation of the Rent, explaining the Manner of Payment. *R. Mo.* 52.

But if a Diſſeiſee releaſe his Right, and the Diſſeiſor by his Deed at a ſubſequent Day, grant, that the Releaſe ſhall be upon ſuch a Condition, the Condition is void. 1 *Rol.* 414. *l.* 15.

(A. 10.) Who ſhall be bound by a Condition.

Vide Poſt, (F.)

If an expreſs Condition be annexed to an Eſtate made to a *Feme Covert*, ſhe ſhall be bound by it. 1 *Rol.* 421. *l.* 32.

Or, to an Eſtate made to an Infant. 1 *Rol.* 421. *l.* 35.

Or, to an Eſtate made to any one of full Age, who dies; his Heir within Age ſhall be bound by the Condition. *R.* 1 *Rol.* 421. *l.* 37.

So a Condition in Law, annexed to an Office which requires Skill or Confidence, binds an Infant and *Feme Covert*. *Co. L.* 233. *b.*

So if an Infant or *Feme Covert* does Waſte, it ſhall be a Forfeiture. *Ibid.*

But if an Infant or *Feme Covert* aliens in *Mortmain*, it is not an abſolute Forfeiture. *Ibid.*

(B.) Condition Precedent.

(B. 1.) What ſhall be.

A Condition is Precedent, or Subſequent.

[There are no technical Words to diſtinguiſh Conditions precedent and ſubſequent; but the ſame Words may indifferently make either, according to the Intent of the Perſon who creates it. *Robinſon* v. *Comyns*, *H.* 9 *G.* 2. *C. T. T.* 164.]

A Condition precedent is ſuch as ought to be performed before the Eſtate veſts, or the Grant or Gift takes Effect.

As, if a Man leaſes Land for Years, upon Condition, *that the Leſſee, if he pays ſuch a Sum within two Years, ſhall have the Fee.* *Co. L.* 216. *a.*

If a Man binds himſelf, *if he recovers twenty Acres, to give a Moiety to* B. if he recovers only ten Acres, he is not bound to give any Part. 1 *Rol.* 433. *l.* 21.

If a Man grants a Sum for the doing of ſuch an Act, or, to ſuch an one if he does it: this is a Condition precedent, for the Duty commences by the Performance. 1 *Rol.* 414. *l.* 25 *ad* 35.

So, if he acknowledges that he owes ſo much, and then binds himſelf in a Penalty for the Payment. *R.* 1 *Rol.* 414. *l.* 35.

If a Submiſſion to an Award be *ita quod fiat*, *&c.* this is a Condition precedent. 1 *Rol.* 416. *l.* 3.

If a Deviſe be of the Reſidue, *after Debts and Legacies paid*; it is a Condition precedent that thoſe be firſt paid. *R.* 1 *Rol.* 415. *l.* 35.

Or of Land, *that it ſhall be ſold, if the Perſonal Eſtate be not ſufficient for the Payment of Debts.* *R. Jon.* 328.

If a Settlement be in Truſt, *that if* A. *marries* B. *after the Age of Sixteen Years, and they have Iſſue Male, the Eſtate ſhall be to* A. *and* B. *for their Lives*; it ſhall be a Condition precedent, that there be the Marriage and Iſſue Male, before the Eſtate veſts. *R. Ca. Parl.* 84.

So, if a Condition be annexed to a Thing, which cannot be done but on a Condition precedent, it ſhall be conſtrued to be a Condition precedent: As, if a Man releaſes an Obligation to *A. provided that* B. *pays him* 20l. *at a future Day.* *R.* 1 *Rol.* 415. *l.* 15.

So in all perſonal Contracts, the Word *Pro*, makes a Condition precedent: As, if I contract to ſell a Horſe *for* 10l. *Hob.* 41.

[Deed-poll to accept Stock when the Receipts ſhould be delivered, and to pay for it at a Day certain, makes a Condition Precedent, and Plaintiff muſt aver a Tender. *Lock* v. *Wright*, *T.* 9 *G. Str.* 569.]

Otherwiſe, generally, where there are mutual Covenants. *R.* 1 *Sand.* 320. *R.* 2 *Sand.* 156.

Yet, if *A.* covenants to aſſure Land, and *B.* covenants for the Performance of it to pay; he is not bound to pay till the Land be aſſured. 2 *Sand.* 156.

[On a Contract to transfer Stock on Payment of Money, the Payment of the Money is not a Condition Precedent, but a concurrent Act; if the Transferror does not attend, the Plaintiff need not ſhew he had the Money ready; if he attends, the Plaintiff muſt lay down the Money, tho' not ſo as to Part with it till Transfer. *Merrit* v. *Rane*, *T.* 7 *G. Str.* 458.]

[If *A.* contracts to transfer Stock, and *B. in Conſideratione Præmiſſorum* to pay *for it*; the Transfer is not a Condition Precedent. *Blackwell*, v. *Naſh*, *M.* 9 *G. Str.* 535.]

Vide Chancery, (2 Q. 8.)—*Pleader*, (C. 51.)

(B. 2.) Condition to have a Fee, when good.

Land may be conveyed for a leſs Eſtate, upon Condition that if ſuch a Thing be performed, the Grantee ſhall have a Fee. *Co. L.* 216.

And ſuch a Condition precedent may be annexed to an Eſtate-tail, which does not merge by the accruing of the Fee, as well as to an Eſtate for Life, or Years. *R.* 8 *Co.* 75. *a.* 76. *a. Ld. Stafford.*

And to Rents, Advowſons, *&c.* which lie in Grant, as well as to an Eſtate in Land. *R.* 8 *Co.* 75. *a.*

But where ſuch Condition is annexed, there ought to be a particular Eſtate granted, as a Foundation upon which the Fee ſhall accrue: As, an Eſtate-tail, for Life or for Years. 8 *Co.* 75.

And the particular Eſtate ought to be permanent; and therefore, to an Eſtate at Will ſuch Condition to have a Fee cannot be annexed. *Per Coke*, 8 *Co.* 75. *a.*

So, if the particular Eſtate granted be for Years, but ſubject to be deſtroyed upon a Contingency, it is not ſufficient: As, if an Eſtate for Years be granted, upon Condition, *that if he pay ten Shillings within a Year, the Leſſee ſhall have it for Life, and if he pay twenty Shillings after the Year, he ſhall have the Fee*; the Condition to have the Fee is not good; for if he pays the ten Shillings, by the Accruing of the Eſtate for Life, the Term for Years was merged. *Ibid.*

And the Eſtate for Life, being only poſſible and contingent, is not ſufficient to ſupport the Condition to have a Fee. *Ibid.*

And as the particular Eſtate ought to be permanent, the Privity of the Eſtate ought to continue; for, if the Grantee or Leſſee aſſigns, the Eſtate in Fee cannot accrue. 8 *Co.* 75. *b.*

Or, if the Grantee accepts a Releaſe for Life, or in Tail from the Leſſor. *Ibid.*

Or, if a particular Eſtate be granted to two, and they make Partition. 8 *Co.* 75. *b.* 76.

So, if the Grantee aſſigns, tho' afterwards he takes back the ſame Eſtate. 8 *Co.* 75. *b.*

Otherwiſe, if one Leſſee dies; for then the Privity does not determine. 8 *Co.* 75.

Or, if the Leſſee leaſes for a leſs Term. *Ibid.*

Or, leaſes for the whole Term, upon a Condition, and enters for the Condition broken. *Ibid.*

Or, if the Leſſor dies, or aliens the Reverſion. *Ibid.*

The particular Eſtate and the Condition to have a Fee ought to be granted by the ſame Deed, otherwiſe the Fee will never accrue. 8 *Co.* 77. *a.*

Or, by different Deeds executed at the ſame Time. *Ibid.*

But tho' the Condition be precedent to the Accruing of the Fee, it does not determine the particular Eſtate to which it is annexed; as, if a Leaſe be made to *A. B.* and *C.* and if *A.* dies living *B.* then to *B.* and his Heirs; tho' this Contingency happens, the Eſtate of *C.* is not determined. *Pol.* 76.

(B. 3.) At what Time an Eſtate ſhall veſt upon a Condition precedent.

If a Leaſe be for Years, with a Condition, that if the Leſſee does ſuch a Thing, he ſhall have the Fee, and Livery be made to the Leſſee; he has the Fee immediately, tho', by the Words, the Performance ought to precede the Eſtate; for the Livery cannot expect *in futuro*. *Co. L.* 217.

But, generally, the Eſtate does not veſt till the Condition precedent performed: And therefore, if a perſonal Thing be granted upon a Condition precedent; the Property does not veſt till the Condition performed.

So, if a Releaſe be of an Obligation, or perſonal Action, upon a Condition precedent; the Action, *&c.* is not ſuſpended till the Condition performed. *R.* 1 *Rol.* 412. *l.* 35.

So, if an Advowſon, or other Thing which lies in Grant, be granted for Years, with Condition to have a Fee; the Fee does not veſt till the Condition performed. *Co. L.* 217. *b.*

So, if the King grants for Years, with Condition to have the Fee; for there no Livery is neceſſary. *Ibid.*

So, if a common Perſon grants for Years, and by a ſubſequent Deed gives the Fee, upon a Condition precedent, to the Leſſee; for then there is no Need of Livery. *Ibid.*

Or, if he grants for Life with ſuch a Condition, and makes Livery; for then the Livery has Effect, and does not expect. *Co. L.* 217. *b.*

After the Condition performed, the Eſtate in Fee veſts without other Solemnity; otherwiſe it could never veſt. 8 *Co.* 76. *b.*

Tho' it be in the Caſe of the King. *Ibid.*

(C) Condition ſubſequent.

What ſhall be.

A Condition Subſequent is ſuch as defeats an Eſtate by ſome Subſequent Act. As, if a Fine be to the Uſe of another, or a Feoffment, *&c.* upon Condition, that if ſuch an Act be afterwards performed, the Eſtate ſhall be void.

So, in every Caſe, where the Intent appears, that the Eſtate ſhall be veſted till the Condition be performed, it ſhall be a Condition ſubſequent: As, if a Fine be to *A.* in Fee *if* B. *does not pay ſo much before Michaelmas, and if he pays, then to* B. *in Fee*; for it appears that *A.* ſhall have the Land till *B.* pays. *R.* 1 *Rol.* 415. *l.* 45.

So a Deviſe to *A. if he lives till his Age of twenty-one Years, upon Condition, that if he dies before, it ſhall go to* B. *and his Heirs,* ſhall be a Condition ſubſequent; for the Intent appears, that *A.* ſhall take immediately. *R.* 3 *Lev.* 132.

A Deviſe of a Term to *A. and that if his Wife permits his Enjoyment for three Years ſhe ſhall have his Goods as Executrix, but if ſhe diſturbs him, his Son ſhall be Executor*; the Wife may ſue as Executrix within the three Years, for the Words, *that the Son ſhall upon Diſturbance,* ſhew the Intent, that the Wife ſhall be Executrix in the mean Time. *R. Cro. El.* 219.

(D) What Conditions are not good.

(D. 1.) If they are impoſſible.

IF a Condition precedent to a Feoffment, *&c.* be impoſſible at the Time, or afterwards becomes impoſſible, the Feoffment ſhall be of no Effect: For, till Performance, the Eſtate cannot veſt. *Co. L.* 206. 1 *Rol.* 420. *l.* 35.

If a Condition ſubſequent to a Feoffment be impoſſible at the Time of the Making, the Eſtate of the Feoffee is abſolute, and the Condition ſhall be void. *Co. L.* 206. *a.* 1 *Rol.* 420. *l.* 30.

So, if the Condition to an Obligation, Recognizance, *&c.* be impoſſible at the Making, the Obligation is ſingle. *Co. L.* 206. *a.* 1 *Rol.* 420. *l.* 30. *R.* 3 *Lev.* 74.

So, if a Condition to a Feoffment, *&c.* be poſſible at the Making, and afterwards becomes impoſſible by the Act of God, the Eſtate of the Feoffee is abſolute; for, being veſted, it cannot be deveſted without the Performance of the Condition, which was for the Benefit of the Feoffee. *Co. L.* 206. *a.* 219. *a.* 1 *Rol.* 449. *l.* 50. *R.* 1 *Sal.* 170.

So, if it becomes impoſſible by the Act of the Feoffor himſelf. *Co. L.* 206. *b.*

But if the Condition of an Obligation, Recognizance, *&c.* was poſſible at the Making, and afterwards becomes impoſſible by the Act of God, of the Law, or of the Obligee himſelf, the Obligation ſhall be ſaved. *Co. L.* 206. *a.* 1 *Rol.* 449. *l.* 35. 451. *l.* 40, 45. *Vide Poſt,* (D. 7.)

So, if a Condition be in the Disjunctive, and gives Liberty to do one Thing or another at his Election, and the one Part becomes impoſſible: As, *to enfeoff A. or make him his Executor,* and he dies before the Obligee. *R. Mo.* 357. *Cro. El.* 277. *Per* 3 *J. Cro. El.* 398. 5 *Co.* 22. *a. Poph.* 98. 1 *Rol.* 450. *l.* 35. *R. Jon.* 171, 2. 181. 2 *Mod.* 202, 203. *Vide Poſt,* (K. 1, &c.)

Otherwiſe, if the Disjunctive does not give Liberty to do the one Thing, or the other. 1 *Rol.* 450. *l.* 50. 451. *l.* 5. *Semb.* 3 *Mod.* 232.

And

And if a Man covenants, or promiſes to do a certain Thing at a certain Time, and it becomes impoſſible by the Act of God, he ſhall not be excuſed. 1 *Rol.* 450. *l.* 20. *Vide Action upon the Caſe upon Aſſumpſit*, (G.)

(D. 2.) What ſhall be ſaid impoſſible.

If a Condition be to do a Thing which by no Means can be done, it ſhall be ſaid to be an impoſſible Condition: As, *to go from London to Rome in three Hours.* 1 *Rol.* 420. l. 10.

To aſſign a Commiſſion of Bankrupts; for the Commiſſion cannot be aſſigned. *R.* 1 *Rol.* 419. *l.* 50.

But if the Condition be improbable, and out of his Power to do, yet it ſhall not be ſaid to be impoſſible.

As, if the Condition be, *that a married Man ſhall marry ſuch a Woman*; for it is poſſible that his preſent Wife may die before him, and the other Woman. 1 *Rol.* 419. *l.* 45.

That the Pope ſhall be in London within a Day. 1 *Rol.* 420. *l.* 8.

That he will indemnify againſt B. *upon an Obligation by* A. *to* C. tho' it does not appear that *B.* is concerned. 1 *Rol.* 420. *l.* 20.

So, tho' it be out of human Power: As, *that it ſhall rain To-morrow*; for it is poſſible. 1 *Rol.* 420. *l.* 5.

(D. 3.) If a Condition be contrary to Law; in a Feoffment, Gift, &c.

So, if a Condition precedent to a Feoffment be illegal, or repugnant, the Eſtate can never veſt.

If a Condition ſubſequent to a Feoffment be to do a Thing which is *malum in ſe*, the Condition ſhall be void, and the Eſtate remains abſolute: As, a Condition *to commit Murder, or Robbery, &c.* *Co. L.* 206. b.

So, if a Condition upon a Feoffment, *&c.* be to do a Thing contrary to the Obligation or Rule of Law: As, a Feoffment upon Condition, *that a Daughter ſhall inherit, and not a Son.* 1 Rol. 418. l. 42.

(D. 4.) Or repugnant;

(D. 4.) To the Grant.

So, if it be repugnant to a Grant: As, a Feoffment, *&c.* upon Condition, *that he ſhall not take the Profits*; the Eſtate remains abſolute, and the Condition is void. *Co. L.* 206. *b.* 7 *H.* 6. 43. *b.*

A Warranty, upon Condition, *that it be void.* 1 *Rol.* 419. *l.* 20.

So a general Warranty, upon Condition, *that he ſhall not have in Value*; yet he may rebut, and then it is not wholly defeated; but he might rebut without the Words, *(againſt all Men,)* and therefore they are defeated. 1 *Rol.* 419. *l.* 25.

So a Grant by a Biſhop rendring Rent to him and his Succeſſors, *and if it be not paid to the Chapter in the Vacation, that it ſhall be void:* The Condition is repugnant, and therefore void. *R. Mo.* 52.

So a Leaſe to *A.* upon Condition, *that he ſhall not take the Profits for two Years.* 2 *Leo.* 132.

Or, to *A. B.* and *C.* upon Condition, *that if C. takes the Profits during the Lives of* A. *and* B. *his Eſtate ſhall ceaſe. Ibid.*

(D. 5.) To the Eſtate.

So, if a Condition upon a Feoffment be repugnant to the Nature of the Eſtate: As, a Feoffment, upon Condition, *that the Feoffee ſhall not alien*; the Eſtate is abſolute, and the Condition void. *Co. L.* 206. *b.* 223. *a.*

So, if a Grant, Releaſe, Confirmation, or Deviſe in Fee be made, upon ſuch a Condition. *Co. L.* 223. *a.*

So, if a Term for Years, or Chattel Real or Perſonal be granted or aſſigned, upon ſuch a Condition. *Co. L.* 223. *a.* *Semb. Cont.* 223. *b.*

So, a Feoffment or Gift in Tail, upon Condition, *that the Wife ſhall not be endowed*, or *the Huſband ſhall not take by the Curteſy*; the Condition is void. 1 *Rol.* 418. *l.* 25. *Co. L.* 224. *a.*

So,

So, a Gift in Tail, upon a Condition, *that the Donee ſhall not levy a Fine,* or *ſuffer a Recovery,* or *make a Leaſe within the St.* 32 *H.* 8. the Condition is void. *R.* 6 *Co.* 41. 10 *Co.* 38. *b.*—*Cont.* as to the Leaſe, *Co. L.* 123. *b. Acc.* as to the Fine and Recovery, *Co. L.* 224. *a. Hob.* 170. *Vide infra.*

So, a Condition to a Gift in Tail, *that the Donee ſhall not be bound by a collateral Warranty.* 10 *Co.* 39.

Or, *that the Donee after Poſſibility ſhall be puniſhed for Waſte. Ibid.*

Or, *that the Donee ſhall not make a Grant for his own Life.* 6 *Co.* 43. *a. Cont. Co. L.* 223. *b.*

Or, *that the Donee ſhall not levy a Fine within the St.* 4 *H.* 7. 1 *Fol.* 418. *l.* 30. Otherwiſe, of a Fine at Common Law. *Ibid. l.* 39. *Vide ſupra.*

So a Condition, *that the Donee ſhall not effectually go to alter, &c.* for an Attempt, without more. is not effectual; and if an Act effectual is done, the Eſtate is gone to another. *R. Jon.* 59.

So, a Leaſe to *A.* and his Aſſignes, upon Condition, *that he ſhall not alien. Hob.* 170.

Or, *that he ſhall not uſe ſuch a Room, or Part*; for it is not excepted. *Ibid.*

(D. 6.) What ſhall not be repugnant.

But a Feoffment, upon Condition, *that the Feoffee ſhall not alien to ſuch a particular Perſon,* is not repugnant; for his Alienation is not totally reſtrained. *Lit. S.* 361.

Or, *that he ſhall not alien in Mortmain. Co. L.* 223. *b.*

So a Condition to a Feoffment before the *St. Quia Emptores Terrarum* is good, *that he ſhall not alien without Licence. Co. L.* 223. *a.*

Or, by the Lord, *that he ſhall not alien,* generally. *Semb. Co. L.* 223. *a.*

And now, ſince the Stat. ſuch a Condition to a Feoffment by the King is good; for he may reſerve a Tenure to himſelf. *Co. L.* 223. *a.*

A Feoffment, upon Condition, *that he ſhall not alien other Land,* is good now. *Ibid.*

So a Condition to a Gift in Tail, *that he ſhall not alien in Fee, or pur auter vie,* is not repugnant; for ſuch Alienation, without a Recovery, will make a Diſcontinuance. *Lit. S.* 362. 1 *Rol.* 418. *l.* 35. 21 *H.* 7. 11. 6 *Co.* 41. *b.*

So, if ſuch Condition be, where the Gift is to *A.* in Tail, Remainder to him in Fee. *R.* 11 *H.* 7. 6. *b.*

So a Feoffment to Huſband and Wife, upon Condition, *that they ſhall not alien,* reſtrains an Alienation, except by Fine. *Co. L.* 224. *a.* 6 *Co.* 41. *b.*

A Feoffment to an Infant, upon ſuch Condition, is good to reſtrain an Alienation during his Infancy. *Ibid.*

So ſuch a Condition, in a Feoffment to an Eccleſiaſtical Corporation, is good. *Co. L.* 224. *a.*

So, if a Leaſe to commence at a future Day be, upon Condition to be void, if the Leſſee dies before the Commencement, or before the End of Term, it is not repugnant. *R.* 1 *Rol.* 418. *l.* 50.

(D. 7.) If a Condition be contrary to Law; In Obligations, &c.

If a Condition of an Obligation be to do a Thing which is *malum in ſe,* the Condition and alſo the Obligation is void: As, if an Obligation be with Condition *to kill another. Co. L.* 206. *b.*

To maintain, and uſe ſuch a one as his Wife, who is the Wife of another. *R. Mo.* 477.

[Bond from *A.* to *B.* reciting they had agreed to live together, *A.* to maintain *B.* and leave her Annuity of 60 *l.* if he quits her, or ſhe out-lives him; if ſhe leaves him, he is not to maintain her any longer, or leave the Annuity; the Bond is illegal and void; it is not *Premium Pudicitiæ,* but *Premium Proſtitutionis. Walker* v. *Perkins, M.* 5 *G.* 3. 3 *B. M.* 1568.]

So, if the Condition be, *to enlarge him out of Priſon,* or *ſuffer his Eſcape. R. Hob.* 14. *R. Hard.* 464.

So, if the Condition becomes impoſſible by the Act of God, of the Law, or of the Obligee, the Obligation ſhall be ſaved. *R. Mo.* 855. *Vide Ante,* (D. 1.)

So, if the Condition be to perform Covenants which are void by Statute, or by Law. *Vide Covenant*, (F.)

[But Condition to reſign a Benefice on Requeſt, generally, is good; and the Court will not ſuffer it to be argued. *Peele* v. *Com. Carliol, M.* 6 *G. Str.* 227. *Turner* v. *Hawkins, T.* 4 *G. Fort.* 351.]

[So Bond with Condition that if Defendant hire *A.* as his Servant in *B.* for ſuch Time as ſhall gain him Settlement in *B.* and permit him to gain Settlement there, or if *A.* gains Settlement by Defendant's Aſſiſtance any where out of *C. &c.* is a good Bond. *Whiting* v. *Punchard, P.* 10 *G.* 3. 3 *Wilſ.* 50.]

(D. 8.) Otherwiſe, if contrary to a Maxim of Law, or Repugnant.

But if the Condition of an Obligation, *&c.* be only to do a Thing contrary to a Maxim of Law, or repugnant to the Nature of the Grant or of Eſtate, the Obligation is good; for he may do it, if he will forfeit his Obligation.

As, if an Obligation be, with Condition *to make a Feoffment to his Wife*; tho' it cannot be by the Rule of Law, the Obligation is good. *Co. L.* 206. *b.*

To do an Act, which will be Maintenance. 1 *Rol.* 417. *l.* 45.

So, if an Obligation be, *that the Feoffee ſhall not take the Profits of his Eſtate. Co. L.* 206. *b.*

Or, *that the Feoffee ſhall not alien. Ibid.*

So, if the Condition of an Obligation, *&c.* was impoſſible at the making, the Obligation is ſingle. 2 *Leo.* 189. 3 *Lev.* 74. *Vide Ante*, (D. 1.)

So, if it be to perform Covenants in an Indenture, *&c.* which becomes void by Raſure, *&c.* 1 *Leo.* 282.

Yet, if the Condition be Part of the Obligation, and incorporated with it, if that becomes impoſſible, the Obligation ſhall be void; as, if the Condition of a Recognizance by Bail be impoſſible. 1 *Sal.* 172.

(E) Condition expounded.

When liberally.

THE Words of a Condition ſhall be liberally expounded to ſerve the Intent of the Parties; as, if the Condition of an Obligation be, *Whereas* A. *will ſurrender a Copyhold to* B. *if they ſo long live, then the Obligation ſhall be void*; it ſhall be Part of the Condition, that *A.* make the Surrender. *R.* 1 *Rol.* 409. *l.* 30.

So, a Condition, *That if* A. *diſcharge a Recognizance, and whereas he hath agreed to free the Obligee from two Bonds*, the Condition is, *that if* A. *ſave him harmleſs from the ſaid two Bonds, then, &c.* it extends to the Recogniſance, as well as to the two Bonds. *R.* 1 *Rol.* 409. *l.* 40.

If the Heir confirms the Grant of his Father as to a Walk in a Foreſt, *&c.* and by the ſame Indenture grants another Walk, upon Condition, *that he do not cut Trees in aliqua Parte Premiſſorum*; if he cuts in the Part confirmed, it is within the Condition. *R.* 1 *Kol.* 422. *l.* 20.

If a Man promiſes, *that he will not diſcharge* A. *out of Execution without the Conſent of* B. and afterwards he releaſes the Execution, upon which *B.* recovers againſt him in *Aſſumpſit*; an Obligation by *A. to indemnify him againſt all Suits which may ariſe upon this Releaſe*, extends to this *Aſſumpſit*. *R.* 1 *Ro.* 422. *l.* 30. 431. *l.* 45. *Vide Poſt*, (I.)

If a Condition be, *to aſſure Lands diſcharged of all prior Incumbrances, except a Leaſe for Years upon the antient Rent*; if he aſſures, but before that, and after the Condition, he makes a Leaſe for Years upon the antient Rent, it is no Breach. 1 *Rol.* 433. *l.* 30.

If a Condition be, *to re-enter, if no Diſtreſs be found*; this ſhall be expounded of a reaſonable Diſtreſs; and therefore, if a lock't Cupboard remains there, he may enter. *R.* 1 *Rol.* 428. *l.* 35.

To perform all Articles in the Indenture, does not extend to Land excepted out of the Leaſe, tho' it be mentioned in the Indenture. *R.* 1 *Rol.* 431. *l.* 25.

If a Condition be, that *if he dies without Iſſue, he by his Deed or Will ſhall give Land to* B. it ſhall be underſtood, that he ſhall make ſuch Settlement or Diſpoſition in his Life-time, which ſhall take Effect, if he dies without Iſſue. *R. per* 3 *J. Jon.* 180.

If a Condition be, *to re-pay* 500*l.* *of the Portion, if his Wife dies within two Years after the Marriage without Iſſue*; if ſhe has Iſſue, he is not bound to re-pay, tho' the Wife and alſo the Iſſue die within two Years. *R.* 1 *Sid.* 102.

If a Condition be, *that the Leſſee ſhall not aſſign without the Aſſent of the Leſſor*; he cannot give, grant, or ſell; for thoſe are Aſſignments. *Mo.* 11.

If a Condition be, *to deliver ſo many Shoes* to A. *a common Carrier, for the Uſe of the Obligee*; a Delivery to the Porter of *A.* is ſufficient, for the Maſter ſhall be bound by it. *R.* 2 *Mod.* 309.

If a Condition be, that *there is no Incumbrance but an Eſtate for Life*; an Eſtate for the Life of *B.* where his Wife by the Cuſtom has Free-Bench, is not a Breach. 2 *Ver.* 45.

If a Condition be in a Leaſe by two Leſſors, that *the Leſſee ſhall enjoy, without Diſturbance or Incumbrance made by them*; a Leaſe by one Leſſor will be a Breach. *R. Lat.* 161.

If a Condition be, *that the Leſſee ſhall enjoy*; this ſhall not be extended to tortious Acts: And therefore, if he be diſturbed without Title, it is not a Breach of the Condition. *R.* 1 *Rol.* 430. *l.* 35.

So, tho' the Words are expreſs, *that he ſhall enjoy without the Interruption of any. Semb. Cont.* 3 *Leo.* 44.

So in Covenant. *R. Jon.* 197.

If a Condition be. *to ſave harmleſs concerning the Buying of Goods at ſuch a Price*; it extends to the Title of the Goods, not to the Price. *R. Al.* 95.

If a Condition be, that *he ſhall not moleſt* A. *in his Lands or Goods upon any Account*; for it ſhall be intended of a tortious Moleſtation. *R. Cro. El.* 705.

So a Condition ſhall not be conſtrued to extend to Things of common Right. *R.* 1 *Rol.* 434. *l.* 20.

As, if a Condition be, *that* A. *ſhall enjoy ſuch Land immediately upon his Death*; and at his Death the Land was ſown with Corn, and his Executor takes the Emblements; the Condition does not extend to it. *R.* 4 *Leo.* 1.

[If a Man binds himſelf by Bond to leave his Children *jointly* 200 *l.* and leaves four Children, and by Will gives the eldeſt Son Land worth more than 50 *l.* and to the other three 50 *l.* apiece, payable at twenty-one; this is not Performance. *Taylor* v. *Bird, M.* 24 *G.* 2. 1 *Wilſ.* 280.]

(F) To what it extends.

IF a Deviſe be to *A.* in Tail, Remainder to *B.* in Tail, upon Condition, *that he, they, or any of them ſhall not diſcontinue, &c.* the Condition extends only to the Remainder. 1 *Rol.* 422. *l.* 5. *R.* 5 *Co.* 68. *Vide Ante*, (A. 10.)

A Gift to *A.* in Tail, Remainder to him in Fee, upon Condition, *that he ſhall not alien*, extends only to the Eſtate-Tail; for it is repugnant to the Fee. *Co. L.* 224. *a.*

So a Leaſe, upon Condition, *that the Leſſee or his Aſſigns ſhall not alien, unleſs to his Brother*; if the Leſſee aſſigns his Term to his Brother, *He* ſhall not be reſtrained by the Condition. *R.* 1 *Rol.* 422. *l.* 10. *Vide Poſt*, (Q.)

That the Leſſee ſhall not ſell, &c. without the Aſſent of the Leſſor; the Executor of the Leſſee, after the Death of the Leſſor, may ſell. *Dy.* 65. *b. Mo.* 11.

(G)

(G) Condition performed.

(G. 1.) By whom it may be.

For and against whom Covenant lies, Vide Covenant, (B. 1, &c.—C. 1, &c.)

IF a Feoffment be upon Condition, *that the Feoffor pay ſo much at ſuch a Day,* and before the Day he dies, the Heir may pay it; for he has an Intereſt in the Land, and the Feoffee has the ſame Advantage if the Payment be by the Heir, as if it were by the Feoffor himſelf. *Lit. S.* 334.

So a Fine *to the Uſe of* A. *in Fee, but if* B. *pays ſo much before Michaelmas to* A. *for Life, and to* B. *in Fee; B.* dies before *Michaelmas*; his Heir may pay. *Dub.* 1 *Rol.* 420. *l.* 45.

If a Deviſe be to a Wife for Life, and after to *A.* his Son in Fee, with a Proviſo, *that if* B. *pays* 500*l. to* A. *within three Months after the Death of the Wife,* B. *ſhall have it to him and his Heirs*; *B.* dies before the Wife; his Heir may pay. *R. Eq. Abr.* 107. *Marks* v. *Marks, M.* 5 *G. Str.* 129.

So an Executor or Adminiſtrator may pay. *Lit. S.* 337. *Co. Lit.* 209. *a.*

Or the Ordinary, if there be no Executor or Adminiſtrator. *Co. L.* 209. *a.*

So, if the Heir be within Age, his Guardian may pay in reſpect of his Intereſt. *Co. L.* 206. *b.*

So every one, who has an Intereſt in the Condition, or in the Land, may perform the Condition: As, if a Feoffee, upon Condition to pay at *Michaelmas,* enfeoffs another before *Michaelmas*; the ſecond Feoffee may pay. *Lit. S.* 336.

So the Feoffee himſelf, after his Feoffment to the other, may pay. *Ibid.*

So a Servant by the Command of the Feoffee may pay. 1 *Rol.* 421. *l.* 47.

So, if an Heir be an Ideot, a Stranger may pay for him. *Co. L.* 206. *b.*

So, if a Stranger, in any Caſe, pay in the Name, and without the Privity of the Feoffor or his Heir, and the Feoffee accept it; it will be a good Performance. *Co. L.* 207. *a.*

So, if two be enfeoffed, upon Condition *to re-enfeoff him for Life, Remainder in Fee to* B. and one re-enfeoffs him; it ſhall be good for a Moiety, tho' the Condition be entire; for, by his Acceptance, the Feoffor diſpenſed with the Condition. *Dy.* 69, 70.

But if a Stranger of his own Head offers to perform a Condition, the Feoffor need not accept it. *Lit. S.* 334.

So, if a Condition be, *that the Feoffor pay,* without limiting a Time for Payment; the Heir, *&c.* cannot pay, for the Feoffor had Time only during his Life. *Lit. S.* 337.

(G. 2.) To whom it ought to be performed.

If a Condition be, *to pay, on ſuch a Day, Money to* A. *his Heirs or Aſſigns*; it may be paid to any one named in the Condition: And therefore, the Money may be paid to the Heir of the Feoffee, after his Death; tho' he has an Executor to whom the Money belongs. *R.* 5 *Co.* 96. *Vide Chancery,* (4 A. 9.)

So it may be paid to the Heir, after Aſſignment by the Feoffee. *R.* 5 *Co.* 96. 1 *Rol.* 421. *l.* 5.

So, if a Condition be, *to convey to* A. *his Heirs and Aſſigns*; and *A.* dies; the Conveyance ſhall be to his Heir. *Semb. Jon.* 181.

So, if the Feoffee aſſigns all his Eſtate, the Payment may be to the Feoffee himſelf, or to his Aſſignee; for the Words of the Condition give him an Election to pay to the one or the other. *Co. L.* 210. *a.*

And after the Death of the Feoffee, the Payment may be to the Heir, or Aſſignee. *Ibid.*

So

So, if a Condition be, *to pay to* A. *his Heirs or Executors*; the Payment may be to the Heir or Executor, at the Election of the Feoffor. *Co. L.* 210. *a.*

If it be, to *pay to the Feoffor, his Heirs or Aſſigns*; it may be to the Heir, or Executor; for he is an Aſſignee in Law, and there cannot be any other Aſſignee of a bare Condition. *Co. L.* 210. *a.* 5 *Co.* 97. *a.*

If a Condition be, *to leaſe to* A. *or his Aſſigns*; he ought to leaſe to thoſe whom *A.* names; for he cannot have other Aſſigns. *R.* 1 *Rol.* 421. *l.* 20.

If a Condition be, *that he pay to the Feoffee*, without more, *on ſuch a Day*, and he dies before the Day; the Payment ought to be only to the Executor or Adminiſtrator, and cannot be to the Heir. *Lit. S.* 339.

So the Payment may be to any deputed by the Feoffee. 1 *Rol.* 421. *l.* 50.

If a Condition be, *that he pay to the Feoffee, his Executors or Aſſigns*; Payment to any Executor is ſufficient. *Per Manw.* 3 *Leo.* 103.

And it is ſafer to pay to an Executor, tho' within Age, than to an Adminiſtrator *durante minore ætate*. *R.* 3 *Leo.* 103.

But if a Condition name any to whom the Payment ſhall be, it cannot be paid to another: As, a Feoffment upon Condition, *that he pay to the Feoffee or his Heirs*; the Payment ought to be to the Heir, and cannot be to the Executor. *Lit. S.* 339. *Co. L.* 210. *a.* *R.* 5 *Co.* 96. *b.* 97. *a.*

So it cannot be paid to an Aſſignee; for he is not named. *R.* 5 *Co.* 96. *b.* 1 *Rol.* 421. *l.* 10.

So, if a Condition be, *to pay to the Feoffee, his Heirs or Aſſigns*, and the Feoffee grants for Life or Years; the Payment cannot be to the Grantee; for no Aſſignee is intended, who has not an Aſſignment of all his Intereſt, *viz.* in Fee, in Tail, or for Life with Remainder in Fee. *R.* 5 *Co.* 97. *a.*

So, if the Feoffee makes his Executor, the Payment cannot be to him; for an Aſſignee in Law ſhall not be intended, where there may be an Aſſignee in Fact. *R.* 5 *Co.* 97. *a.* *Co. L.* 210. *a.*

If a Condition be, *to pay to ſuch whom the Obligee ſhall name by his Will*, and he does not name any; the Payment ſhall not be to his Executor, for there ought to be an expreſs Nominee. *R.* 1 *Rol.* 422. *l.* 25.

(G. 3.) At what Time.

(G. 3.) When he has Time during his Life. Tho' there be a Requeſt.

If a Condition upon a Feoffment, Obligation, *&c.* be to do a ſingle Act, or Labour, which concerns himſelf only; he ſhall have Time to do it during his Life. *Co. L.* 208, 9.

And ſhall not be bound to do it upon Requeſt. *Co. L.* 209. *a.*

As, if a Feoffment, Obligation, *&c.* be upon Condition, *that the Feoffee, Obligee, &c. go to Rome, Jeruſalem, &c.* the Feoffee has Time to go, during his Life. *Ibid.*

Or, *that a Stranger go to Rome, &c. Ibid.*

So, if a Condition be to do an Act, without limiting any Time; he who has Benefit by it may do it at what Time he pleaſes: As, if a Condition of a Feoffment be, *that upon Payment of* 10l. *the Feoffor may re-enter*; he may pay it when he pleaſes. *Pl. Com.* 16. *a.*

(G. 4) When he has Time during his Life. Unleſs where haſtened by Requeſt.

If a Condition be to do a local Thing to the Feoffor or Obligee himſelf, he has Time during Life, unleſs he be haſtened by Requeſt; as, if a Feoffment or Obligation be upon Condition, *that he re-enfeoff the Feoffor or Obligee. Co. L.* 208. *b.* 1 *Rol.* 438. l. 15, 40. *Co. L.* 219. *a.* 220. *a.*

So, if it be, *that he re-enfeoff the Feoffor, and a Stranger. Co. L.* 219. *b.*

Or, *re-grant to the Feoffor in Tail, Remainder to a Stranger. Ibid.*

So, if a Deviſe be to *A.* upon Condition, *that ſhe marry* B. Time ſhall be allowed to *A.* to marry at any Time during her Life. *Per Holt, Skin.* 320.

So, if a Deviſe be upon Condition, *that* A. *marry him before her Age of* 21 *Years*, and *B.* dies before ſuch Age; *A.* ſhall have the Land till her Age of 21 Years. *Ibid.*

(G. 5.) When to be performed immediately.

But where a Condition is to do a tranſitory Thing without limiting any Time, it ought to be done immediately, *viz.* in convenient Time; as, an Obligation *to pay Money, to deliver Charters, &c.* *Co. L.* 208. *a.* 1 *Rol.* 436. *l.* 15 to 35.

An Obligation *to deliver up an Obligation in which* A. *and* B. *are bound.* R. 6 *Co.* 30. *b.*

A Deviſe upon Condition *to pay Debts*; they ought to be paid in convenient Time. 1 *Rol.* 437. *l.* 20.

Or, *to ſell for Payment of Debts.* 1 *Rol.* 437. *l.* 25.

To find Security for Payment. R. 1 *Rol.* 438. *l.* 25.

If a Man be bound to make further Aſſurance, *&c.* he ought to execute it immediately when required, without taking Time to adviſe with Counſel. 1 *Rol.* 440. *l.* 5, 15. 441. *l.* 30, 45. *Per* 2 *J. Barkley Cont. Jon.* 314. *Vide Poſt*, (H.)

So, if a Condition be to do a local Thing, which may be done in the Abſence, and without the Concurrence of the Obligee, it ſhall be performed immediately: As, an Obligation, *that he acknowledge Satisfaction upon Record in B. R.* *Co. L.* 208. *b.* 1 *Rol.* 436. *l.* 30.

So, if a Condition be to do a Thing tranſitory or local, to a Stranger: As, *to pay Money to a Stranger.* *Co. L.* 208. b. 1 *Rol.* 437. *l.* 15. 438. *l.* 5.

To enfeoff a Stranger; he ought to do it immediately, for otherwiſe the Stranger will loſe the Profits in the mean Time. *Co. L.* 208. *b.* 1 *Rol.* 439. *l.* 30.

Otherwiſe, if the King has Land upon ſuch Condition. *Dy.* 139.

Or, if it be, *to the Stranger in Tail, Remainder to the Feoffor.* 1 *Rol.* 438. *l.* 22. *Cont. Co. L.* 219. *b.*

So, if a Condition be to do a local Thing to the Feoffor, or Obligee himſelf, it ought to be done immediately, where the Intent of the Parties will be otherwiſe fruſtrated: As, an Obligation *to grant an Annuity to the Obligee, for his Life, to be paid annually at Eaſter*; it ought to be granted before *Eaſter*, otherwiſe it cannot be paid annually at *Eaſter* during his Life. *Co. L.* 208. *b.* 1 *Rol.* 439. *l.* 15.

If *A.* promiſes *to ſell a Leaſe of Tithes made to* B. *for his Life, and by him aſſigned to* A. *and to pay the Money raiſed by the Sale, or otherwiſe to re-deliver the Aſſignment*; he ought to do it in convenient Time, and has not Time to ſell during his Life; for then perhaps by the Death of *A.* the Leaſe will expire. *R.* 1 *Rol.* 436. *l.* 40.

So a Promiſe *to procure the King's Grant, of a Ward,* ſhall be done in convenient Time; for otherwiſe the Profits in the mean Time will be loſt. *R.* 1 *Rol.* 437. *l.* 40.

So, if a Feoffment be made, upon Condition *to give back the Advowſon to the Feoffor for his Life*; it ought to be given back before an Avoidance happens. *R.* 2 *Co.* 78. *b.* *Co. L.* 222. *b.*

If a Covenant be to make a Leaſe to *B.* who ſhall pay 20*l.* as a Fine; *B.* ought to requeſt the Leaſe in a convenient Time. *R. Bridg.* 41.

But where a Condition is to be performed immediately, he ſhall have a reaſonable Time to perform it, according to the Nature of the Thing to be done. *Vide Poſt*, (H.) 1 *Rol.* 449. *l.* 12.

So, if it be to be performed upon Demand. 1 *Rol.* 449. *l.* 12. 443. *l.* 17.

But if he refuſes upon Demand, it is broken, tho' he performs it within a reaſonable Time afterwards. 1 *Rol.* 449. *l.* 15.

If a Condition be to make an Obligation immediately by the Advice of *B.* he ſhall have a reaſonable Time to obtain the Advice of *B.* 1 *Rol.* 443. *l.* 15.

(G. 6.) How a Condition ſhall be performed where the Time is limited. What ſhall be the Time intended.

If upon a Writ returnable *die Lunæ prox. poſt Cras. Trin.* an Arreſt be on the laſt Day, and an Obligation of the ſame Date, to appear *die Lunæ prox. poſt Cras. Trin.* he ought to appear the ſame Day. *Dub.* 1 *Rol.* 444. *l.* 30.

If a Condition be to pay at *Mich.* without more; he ought to pay at the next *Mich.* R. 1 *Rol.* 444. *l.* 50.

If a Condition be, *to pay A. D.* 1599. *upon the* 12*th of October next after Date*; it ſhall be paid the 12*th of October, Anno* 1599, tho' that be not the *October*

October next after Date: For the Intent appears, that it be paid *Anno* 1599, and the ſubſequent Words ſhall be conſtrued to ſtand with the precedent; or if they cannot, they ſhall be void. *R.* 1 *Rol.* 444. *l.* 40.

If an Obligation, dated 17*th November*, 12 *Jac.* be, upon Condition, *to pay the* 21*ſt November enſuing* 5*l.* *and* 5*l.* *more on the* 20*th of December next after*; the firſt 5*l.* ſhall be paid on the 21*ſt* of *November*, 12 *Jac.* for, *enſuing*, refers to the Day, not to the Month. *R.* 1 *Rol.* 442. *l.* 20.

If a Condition be, *to pay when* A. *comes to his Houſe* 10s. *and* 10s. *at Mich.* *and* 10s. *at St. Andrew then next*; the Payment of the latter Sums ought to be at the next *Mich.* and *St. Andrew*; and not at thoſe Feaſts after *A.* comes to his Houſe. 1 *Rol.* 442. *l.* 25.

If a Condition be, *to pay citra, infra, vel ante Feſtum*; it ought to be paid before the Feaſt-Day. 1 *Rol.* 442. *l.* 30.

But if it be, *in Feſto*, it ought to be paid upon the Feaſt-Day. 1 *Rol.* 442. *l.* 35.

If a Condition be, *to pay within forty Days after a Ship returns from her Voyage to the Port of* D. *or to another Port where the Goods are unladen*, the Ship returns to the Port of *P.* and there unlades; Payment ought to be in forty Days after the Arrival, and not after the Unlading: For that is but the Deſcription of the other Port. *R.* 1 *Rol.* 442. *l.* 40.

[In Debt on Bond, the Condition whereof reciting, "That a Marriage was intended between *A.* and *B.* but at *B.*'s Requeſt to be deferred to her Father's Death; that *A.* and *B.* had mutually engaged not to intermarry but with each other; in Conſideration thereof, and for Proviſion for *A.* if ſaid Marriage ſhould not take Effect, and that *B.* ſhould intermarry with any other Perſon, or die before the Marriage, or refuſe to marry *A.* on her Father's Death, *B.* had agreed that *A.* in either of the Caſes aforeſaid ſhould have 1200*l.* of her Fortune, and 5*l. per Cent.* Intereſt from the Date; *Now*, if *B.* within a Month of her Intermarriage with any Perſon but *A.* or within a Month after her Father's Death, pay *A.* 1200*l.* and 5*l. per Cent.* Intereſt from the Date, or her Heirs, *&c.* within a Month of her Death pay *A.* 1200*l.* then, *&c.*" and *B.* afterwards marries another Man in her Father's Life-time, the Bond is forfeited, and the Money then payable, for the Law will ſupply the Words, *which ſhall firſt happen*. *Semb.* *Box* v. *Day*, *P.* 17 *G.* 2. *Wilſ.* 59.]

(G. 7.) It may be performed before the Day limited.

If a Condition be to pay Money *at ſuch a Day*, it is ſufficient if it be paid before the Day, if the Party accepts it; for that amounts to Payment upon the Day. *R.* 1 *Rol.* 440. *l.* 30, 35. 473. *l.* 30. *Co. L.* 212. *b.*

So, if it be to enfeoff ſuch a one *at a future Day*; it is ſufficient if he enfeoff before the Day. 1 *Rol.* 440. *l.* 40.

Or, to enfeoff *after the Death of A.* and he enfeoffs in his Life-time. 1 *Rol.* 440. *l.* 45.

If it be to pay *at or before ſuch a Day*; he may pay at any Time before, if he comes to the Obligee, or meets him at the Place appointed for Payment. *R.* *Cro. El.* 14.

But Payment before the Day will not give a collateral Advantage: And therefore, if a Condition be, *upon Payment the* 1*ſt of May to re-enter*; if he pays before, he cannot re-enter till the 1*ſt* of *May*. *R.* 1 *Rol.* 473. *l.* 30.

(G. 8.) Or at the laſt Part of the Day.

So it is ſufficient, if it be performed at the laſt Part of the Time limited: As, if the Parliament enacts, that *A.* ſhall be convicted, *if he does not ſurrender himſelf within a Quarter of a Year*; it is ſufficient, that he be ſurrendered on the laſt Day of the Quarter. 1 *Rol.* 442. *l.* 15.

If a Condition of an Obligation be *to pay at or before* 29*th Sept. next*; a Tender ſhall not be good without Notice, unleſs it be upon the laſt Day, *viz.* 29*th Sept.* *R. Cro. El.* 14.

And a Tender may be the laſt Inſtant of the Day. *Adm. Mo.* 122.

An Obligee, *&c.* to whom a Condition is to be performed, need not attend the whole Day. *Vide* 1 *Rol.* 443. *l.* 7.

(G. 9.)

(G. 9.) In what Place it ſhall be performed.

If a Condition of an Obligation be to pay Money to the Obligee, at a Day certain, without limiting any Place; the Obligor is to ſeek out the Obligee if he be within the Realm. *Lit. S.* 340.

So, if a Feoffment be upon ſuch Condition; for it is a Sum in Groſs, and collateral to the Land. *Lit. S.* 340. 1 *Rol.* 445. *l.* 30, *ad* 40.

So, if a Condition be, that a Stranger ſhall ſhew a Deed to his Counſel upon Requeſt; after Requeſt made, the Stranger ought to ſeek out his Counſel. 1 *Rol.* 443. *l.* 35.

But if a Condition be, to deliver a weighty Thing, as Corn, Timber, &c. the Obligor, before the Day, ought to enquire where the Obligee will appoint the Delivery. *Co. L.* 210. *b.* 4 *Leo.* 46.

If a Condition be to pay Rent; it is ſufficient, that it be tendred, or paid, upon the Land. *Co. L.* 210. *b.*

And it may be tendred upon the Land, tho' he be bound by Covenant to pay. 1 *Rol.* 443. *l.* 52.

Or, bound under a Penalty to pay. 1 *Rol.* 444. *l.* 2.

So, if a Condition be to pay, &c. at a Place certain, without limiting any certain Time; the Party ought to give Notice to the Obligee of the Time when he will pay. *Co. L.* 211. *a.* 8 *Co.* 92. *b.* 1 *Rol.* 449. *l.* 5.

Or, if he meets the Obligee or Feoffee at the Place at any Time, he may pay. *Co. L.* 211. *a.*

Or, if the Obligee receives the Money at another Place, it is ſufficient, tho' he need not. *Co. L.* 212.

So, if a Condition be, that a Stranger make a Feoffment, or do another Act to a Stranger at ſuch a Day; he who is to make the Feoffment ought to give Notice to the Feoffee, and requeſt him to be upon the Land. *Co. L.* 211. *a.*

If a Condition be to do an Act at ſuch a Place upon Requeſt, the Requeſt may be in any Place: As, to deliver at *Rotterdam ſuper Requiſitionem de eodem*; the Requeſt in any other Place, to deliver there, is good. *R.* 1 *Rol.* 443. *l.* 20.

If a Place certain be limited for Payment, he is not bound to pay at another Place. 1 *Rol.* 445. *l.* 52. 444. *l.* 7.

Neither need the other accept it in another Place. 1 *Rol.* 446. *l.* 5, 10. 444. *l.* 10. *Lit. S.* 343.

But Acceptance at another Place is ſufficient. *Lit. S.* 343.

(G. 10.) How a Condition ſhall be performed

(G. 10.) All Incidents. *How Performance ſhall be pleaded. Vid in Pleader*, (C. 58, &c.)

If a Condition be to do a Thing; he ought to do all that which depends upon the Performance. 1 *Rol.* 422. *l.* 45.

As, if a Condition be *to ſtand to an Award concerning a Partition*; if it awards a Partition, and that he levy a Fine for Confirmation, he ought to levy the Fine; for it depends upon the Partition, and enforces it. 1 *Rol.* 433. *l.* 47.

(G. 11.) Strictly performed.

So he ought to perform it ſtrictly: As, if a Condition be *to enter a Retraxit*, and he diſcontinues; it is not a Performance. 1 *Rol.* 426. *l.* 32.

To appear at the Suit of ſuch a one in B. R. and he appears there the ſame Term in another Suit; tho' this be an Appearance in Law, it is not a Performance. *R.* 1 *Rol.* 426. *l.* 40.

To pay to the Obligee; Payment to his Wife, without more, is not a Performance. *R. Rol.* 427. *l.* 10.

To enfeoff one, and he enfeoffs him and others. 1 *Rol.* 427. *l.* 45.

That two ſhall enfeoff, and one enfeoffs the Whole. 1 *Rol.* 421. *l.* 45.

(G. 12.) According to the Intent. *Vide Ante*, (E.) *Vide Poſt*, M. 1.)

So, if a Condition be, *that it ſhall be lawful for the Leſſee to enjoy*; if the Leſſor enters upon him wrongfully, it is a Breach; for the Intent was, that the Leſſor ſhould not interrupt him. *R.* 1 *Rol.* 427. *l.* 15. *R. Cro. El.* 544.

Tha

That the Leſſee ſhall not parcel out his Land from the Houſe; if he leaſes to another the Houſe and Part of the Land, and afterwards leaſes the other Part it is a Breach. *R.* 1 *Rol.* 427. *l.* 20.

That he aſſure Land which was bargained and ſold to him; tho' the Bargain and Sale were void, yet he ought to aſſure the Land, which was pretended to be bargained. *R.* 1 *Rol.* 427. *l.* 30.

That he acquit him; if he gives an Acquittance, but does not acquit him in Fact, it is not ſufficient. 1 *Rol.* 433. *l.* 43.

That he enjoy without Damage for Want of Warranty; if he does not render in Value upon the Warranty, is not ſufficient. 1 *Rol.* 433. *l.* 37.

That he ſhall not alien; and he gives to his Son. 1 *Rol.* 433. *l.* 50.

If a Recognizance be, upon Condition *to try an Indictment the next Term*, and a Trial is had, but the Verdict quaſhed for a Defect in the *Venire facias*; the Recognizance is forfeited, for it ought to be an effectual Trial. *R. Mod. Ca.* 179.

(G. 13.) Ought to be performed *bona fide*.

So a Condition ought to be performed truly and *bona fide*, and not colourably; and therefore, if it be agreed, that the Money ſhall be paid at the Day limited by the Condition, but ſhall be returned immediately to him who pays it; the Condition is not performed. *Co. L.* 209. *b.*

If a Condition be, *quod licitum foret to A. to ſee all the Accounts of the Teſtator*, and one of the Executors refuſes to ſhew them, and the other, who was bound with ſuch Condition, ſays, that he does not deny it; it is not a Performance, for he ought to ſhew all the Accounts. *R.* 1 *Rol.* 431. *l.* 5.

(G. 14.) But it is ſufficient, if it be performed in Subſtance.

But it is ſufficient, if the Subſtance of the Condition be performed. *Vide* 1 *Rol.* 426. *l.* 8.

If a Condition be, *that he ſuffer the Leſſee to enjoy without the Interruption of any*; an Entry of a Stranger by an elder Title is not a Breach, for the Word, *ſuffer*, is Paſſive. 1 *Rol.* 425. *l.* 45.

So a Condition, *that he permit Land to deſcend*; tho' his Son is outlawed, and cannot take. *R.* 1 *Rol.* 426. *l.* 5.

That he deliver Letters Patents; and he delivers an Exemplification of them. 1 *Rol.* 426. *l.* 10.

That he enfeoff; and he conveys by Leaſe and Releaſe. *Semb.* 1 *Rol.* 426. *l.* 12. *Co. L.* 207. *a.*

That he grant the Reverſion; and he enfeoffs, and the Tenant re-enters. 1 *Rol.* 426. *l.* 15.

That he give Licence to carry Goods; and the Party is diſturbed by a Stranger. 1 *Rol.* 426. *l.* 25, 20.

That he withdraw his Suit; and he diſcontinues. 1 *Rol.* 427. *l.* 5.

That the Leſſee may enjoy without Moleſtation, and a Rent-ſeck is iſſuing out of the Land; it is not a Breach, for the Poſſeſſion is not incumbred with it. 1 *Rol.* 434. *l.* 15.

And if the Rent-ſeck be to the Queen, who may diſtrain of Common Right by her Prerogative; it is not a Breach, for he is not bound to diſcharge Things of Common Right. *R.* 1 *Rol.* 434. *l.* 20. *Vide Ante*, (E.)

A Condition, *that he pay to A. and other Pariſhioners of B.* if he pay to *A.* and two others, it is ſufficient. *R. Mo.* 68.

If *A.* be bound by Recognizance *to perform the Will of B. and to ſatisfy all Bequeſts according to his true Intent*, who deviſed Lands held *in Capite* to *C.* in Fee; if the Heir enters for the third Part, it is not a Breach.

[A Note for Payment of Money on a *South-Sea* Contract, is a Performance or Compoſition as well as a Bond. *Fotheringham* v. *Mozato*, *P.* 1722. *Bunb.* 108.]

(H) Condition to make Aſſurance.

IF a Condition be *to levy a Fine, or make an Aſſurance*, without ſaying, at whoſe Charge; it ſhall be at the Coſts of him, who is bound to do it. 1 *Rol.* 422. *l.* 50.

And the Obligor ought to ſue a Writ of Covenant for the Fine, in the Name of the Obligee. 1 *Rol.* 422. *l.* 52. *Cont.* 1 *Rol.* 458. *l.* 40. *D. Cont.* 5 *Co.* 127. *a.*

If a Condition be *to make Aſſurance*, he ought to make an effectual Aſſurance; and therefore, if it be to *make a Feoffment*, a Charter of Feoffment, with a Letter of Attorney to make Livery, is not a Performance, if Livery be not made. 1 *Rol.* 425. *l.* 35.

To ſurrender a Copyhold, is not performed by a Surrender to Copyhold-Tenants, if it be not preſented at the next Court. *R.* 1 *Rol.* 425. *l.* 20.

If a Man bargains and ſells Land by Indenture, and covenants to make a good Eſtate before *Chriſtmas* next; an Inrolment of the Indenture before is not ſufficient, but he ought to levy a Fine, make a Feoffment, *&c.* *R.* 3 *Leo.* 1. *Bend. pl.* 62. *And.* 27.

If a Covenant be to make Aſſurance, *&c.* he ought to do every Thing that is neceſſary to be executed by him, tho' without ſome other Act, as Livery, Inrolment, *&c.* the Aſſurance is not compleat. *R.* 1 *And.* 56.

But if a Condition be *to make ſuch a Releaſe, &c. as A. ſhall direct*; if he executes that which *A.* directs, it is enough, tho' it be not ſufficient. *D.* 5 *Co.* 23. *b.*

So, if it be to make a ſufficient Eſtate *by the Advice of A.* who adviſes that which is not ſufficient. 5 *Co.* 23. *b.*

So it ought to be an abſolute Aſſurance; for if a Man be bound to make an abſolute Aſſurance of a Copyhold, a Conditional Surrender is not a Performance. *R.* 1 *Rol.* 425. *l.* 10.

So, if he be bound to *make Aſſurance*, generally. 1 *Rol.* 425. *l.* 15.

If a Condition be, *to make a Conveyance of ſuch Land*, or, *to aſſure ſuch Land*; he ought to make any Conveyance or Aſſurance that ſhall be required.

So, if it be *to do all Acts for Aſſuring*. *Yel.* 45.

And if a Conveyance, generally, be required, he ought to execute ſome Sort of Conveyance. *R. Yel.* 45.

If a Fine, or Bargain and Sale be afterwards demanded, he ought to do it: for he is bound to do all Acts *toties quoties* he ſhall be required. *Ibid.*

If a Note of a Fine to be acknowledged before a Judge of Aſſiſe be required; he ought to do it, tho' a Writ of Covenant is not depending; for it is preparatory. *R. Mo.* 810. 2 *Cro.* 251.

If a Common Recovery be required; he ought to do it. 1 *Rol.* 427. *l.* 25.

If it be *to make Aſſurance at the Coſts of the Obligee*; he ought to make, tho' not neceſſary, all the Aſſurances required. *Per* 2 *J. Mo.* 570.

If the Condition be, *to make ſuch Aſſurance for Money as Counſel ſhall deviſe*, and he deviſes an Obligation of 1000*l.* for Payment of 100*l.* he ought to execute it. 1 *Rol.* 423. *l.* 25.

Otherwiſe, if it be *to make ſuch reaſonable Aſſurance*. 1 *Rol.* 423. *l.* 30.

If it be *to make an Obligation*, and he tenders an Obligation which binds his Heirs; he ought to execute it. 1 *Rol.* 424. *l.* 32.

If there be a Receipt for Purchaſe-Money contained in it; he ought to execute it. *Dub. Mo.* 367.

If a Condition be *to aſſure to ſuch an one as* B. *ſhall name*; an Aſſurance to *B.* himſelf is good; for his Acceptance is a Nomination of himſelf. 1 *Rol.* 424. *l.* 10.

To aſſure to B. *and his Heirs*; if *B.* dies, it ſhall be made to his Heir; for the Copulative ſhall be conſtrued in the Disjunctive. *R.* 1 *Rol.* 450. *l.* 50.

But if the Condition be, *to make an Aſſurance or Conveyance*, and a Warranty or Covenant be in the Deed; he is not bound to execute it. 1 *Rol.* 424. *l.* 37. *R.* 2 *Cro.* 571. 2 *Rol.* 191. *R.* 1 *Leo.* 29. *Dub.* 1 *Sid.* 467. *R.* 1 *Mod.* 67. *Per* 2 *J. And. Cont.* 2 *Leo.* 130. *Per Co.* 1 *Rol.* 71.

So he is not bound to execute an Obligation, or Statute for Enjoyment; for that is not an Aſſurance. 2 *Cro.* 115.

Yet a Conveyance with reaſonable Covenants he ought to execute. *Cont.* 2 *Cro.* 571. *Acc. Ray* 190. 1 *Mod.* 67.

So,

So, tho' a Condition be *to make ſuch Aſſurance as Counſel ſhall adviſe*, and the Counſel adviſes an Obligation. 1 *Rol.* 423. *l.* 10. 2 *Cro.* 115.

So, if it be *ſuch Aſſurance of an Annuity as Counſel ſhall adviſe*, and he adviſes an Obligation. *Dub.* 1 *Rol.* 423. *l.* 20.

Otherwiſe, if, *all Acts for Aſſurance which Counſel ſhall deviſe. Per Poph.* 1 *Rol.* 423. *l.* 15.

So, if it be *all reaſonable Acts for Aſſurance. R. Yel.* 45.

So he is not bound to execute an Aſſurance, which contains more than the Condition; as, a Fine of four Houſes, where the Condition was for two only; tho' the Uſe of the other two will be to the Conuſor. *R.* 1 *Rol.* 425. *l.* 5. *R.* 1 *Sid.* 467.

If a Condition be *to make ſuch reaſonable Aſſurance of Land in Fee, reſerving Rent to the Feoffor in Fee, as Counſel ſhall adviſe*, who deviſes a Feoffment reſerving Rent in Fee; it is not good, for it will be a Rent-ſeck, and the Deed belongs to the Feoffee. *R.* 1 *Rol.* 423. *l.* 35.

So, tho' the Agreement be to do it *by Deed*, and he deviſes a Feoffment by Deed Poll; for it belongs to the Feoffee. 1 *Rol.* 423. *l.* 30.

Otherwiſe, if the Feoffment was by Indenture. *Semb.* 1 *Rol.* 423. *l.* 45.

If a Condition be *to be bound with A.* which imports a joint Obligation, he need not execute an Obligation joint and ſeveral. *R.* 1 *Rol.* 424. *l.* 40.

Tho' it be, *by ſuch a Writing and in ſuch a Sum as B. ſhall agree*, and he agrees to an Obligation joint and ſeveral. *Semb.* 1 *Rol.* 424. *l.* 45.

If a Condition be *to aſſure to B. as his Counſel ſhall adviſe*; if *B.* himſelf deviſes, he is not bound to do it. *R.* 5 *Co.* 19. *b. Cro. El.* 297. *R. Cont. Cro. El.* 465. 1 *Rol.* 466. *l.* 20.

Otherwiſe, if it be, *as Counſel may adviſe. Semb.* 1 *Rol.* 424. *l.* 5.

And if his Counſel adviſes *B.* who gives Notice of it to the Obligor, it is well, and more proper than if Counſel adviſes the Obligor himſelf. *R.* 5 *Co.* 19. *b.* 1 *Rol.* 424. *l.* 15. *Vide Cro. El.* 298.

Otherwiſe perhaps, if it was, *as Counſel adviſes the Defendant himſelf. Per Poph. Cro. El.* 298.

If it be *to make a Releaſe upon the Performance of all of the other Part*, who was to make a Feoffment at the Charge of *B.* he need not make the Releaſe before the Feoffment, tho' *B.* did not tender the Charge. *Dy.* 371. *a.*

If a Condition be *to aſſure as Counſel adviſes*; it is ſufficient, that it be notified what Sort of Conveyance his Counſel adviſes. *Per Poph. Mo.* 595.

But if it be *as Counſel deviſes*, he ought to tender the Conveyance engroſſed. *Ibid.*

And if a Condition be *to make ſuch Aſſurance as the Obligee or his Counſel ſhall adviſe*; he ought to give Notice to the Obligor what Aſſurance is deviſed or adviſed. 5 *Co.* 23. *b.*

So, if it be *ſuch Releaſe, &c. as A. his Counſel ſhall adviſe*; he ought to procure *A.* to direct the Releaſe. *R.* 5 *Co.* 23. *b. Cro. El.* 716. *D. Cont.* 1 *Leo.* 105.

If it be *to make ſuch Aſſignment as Counſel ſhall adviſe*; he ought to procure Counſel to adviſe. *Dub.* 3 *Mod.* 192.

But if it be *to make ſuch Releaſe, &c. as a Judge*, or *a Stranger ſhall adviſe*; the Obligor ought to procure his Advice. *R.* 5 *Co.* 23. *b.*

Or, *ſuch as ſatisfies his Counſel*; the Obligor ought to tender a Releaſe to the Counſel of the Obligee, to know if he be ſatisfied with it. *R.* 2 *Lev.* 95.

So, if it be *to aſſure at the Charge of the Obligee, &c.* he ought to notify what Aſſurance he will make, before the other need tender the Charges. *R. Mo.* 454. *Ow.* 157. 5 *Co.* 22. *b. Cro. El.* 517. 2 *Mod.* 75. *Vide Election*, (A. 1, 2.)

Or, to make any particular Conveyance, as *a Feoffment, &c.* he ought to notify what Feoffment, and how he will make it. *R.* 5 *Co.* 22. *b. Cro. El.* 517.

But if a Condition be *to aſſure ſuch Land to another*, he ought to make the Aſſurance at his Peril.

So, if it be *to aſſure at the Charge of the Obligee*; he ought to aſſure without a Tender of the Charges, for the Obligee does not know what Charge ſhall be paid till

till the Obligor gives Notice what Assurance he will make. *R.* 5 *Co.* 22. *b. Mo.* 454. *Cro. El.* 517. *Ow.* 157.

So, if it be *to make a Feoffment or other particular Assurance*; the Obligor shall do the first Act, and give Notice what Feoffment, &c. he will make. 5 *Co.* 22. *b. Per Walmsley, but the other Judges Cont. Cro. El.* 517.

Or, *to make the Assurance which his own Counsel shall devise*; he ought to procure his Counsel to devise. *Per Gawdy*, 1 *Rol.* 464. *l.* 1.

If it be *to assure Land, upon Request*; he ought to make a good Estate at his Peril, without a Tender of a Conveyance by the Obligee: For the Request does not relate to the Manner of Conveyance, but to the Time. *R.* 1 *Rol.* 465. *l.* 5. *R. Mo.* 682.

So, if a Condition be *to make, and upon Request to seal an Obligation.* Z. 1 *Rol.* 465. *l.* 25.

If a Condition be *to execute a Release to the Satisfaction of the Counsel of the Plaintiff*; he ought to do it without a Tender. *R. Ray.* 232. 1 *Vent.* 255. 1 *Mod.* 104.

If a Condition be, *that two make an Assurance as shall be devised*, and the Assurance be devised and tendred to one, who refuses; the Condition is broken, for he need not tender to both together. 1 *Rol.* 454. *l.* 45.

If a Condition be *to make such Assurance as the Obligee shall devise*; he ought to execute it immediately when it is tendred, and shall not have Time for advising with his Counsel. *R.* 2 *Co.* 3. 1 *Rol.* 424. *l.* 25. 440. *l.* 5, 15. 441. *l.* 35. *R. Dy.* 338. *a.*

So, if it be, *such Assurance as the Counsel of the Obligee shall devise*, and he tenders a Surrender, &c.

So, if he tenders a Letter of Attorney to make a Surrender, he ought to take Notice of the Law, if it be an Assurance within the Condition, and shall not have Time for advising. *R.* 1 *Rol.* 441. *l.* 45. *Cro. Car.* 299. *Vide Jon.* 314.

But if he advises a Fine, he shall have a reasonable Time to do it. *R.* 1 *Rol.* 441. *l.* 40. 466. *l.* 15.

If he be bound *to make Assurance at his own Costs as shall be required*; the Obligee cannot require more Assurances than are necessary. *Mo.* 570.

If it be *to surrender a Copyhold upon Request*; he shall have a reasonable Time for it. *Semb. Godb.* 445.

If a Request be *to surrender by Attorney*; he need not do it: for the Covenantor has his Election how he will surrender. *Godb.* 445. *Jon.* 314.

(I) Condition to indemnify.

A Condition *to indemnify against* A. is broken by his threatening to beat the Obligee, by reason of which he dares not go about his Business. 1 *Rol.* 453. *l.* 12.

If a Condition be *to save harmless from an Obligation in which he is bound to* A. the Obligor ought to discharge it by Release, or otherwise. 1 *Rol.* 432. *l.* 25.

So, if it be *to save harmless from all Suits and Demands concerning that Obligation.* 5 *Co.* 24. *a.*

And therefore, if he pays the Money at the Day, tho' he was not sued or arrested for it; the Condition is broken. *R.* 5 *Co.* 24. *a. R.* 1 *Rol.* 433. *l.* 5.

So, if the Obligation be forfeited, whereby he is liable to be sued. *Semb.* 1 *Rol.* 432. *l.* 30.

A fortiori if he be sued, tho' the Obligation be satisfied before Execution. *R.* 1 *Rol.* 432. *l.* 45.

So, if a Condition be *to be discharged of Tithes*; it shall be broken if he be sued for Tithes, tho' they be not recovered. 1 *Rol.* 430. *l.* 10.

If a Condition be *to save harmless from all Actions which may arise upon the releasing of* D. *out of Execution*; he ought to indemnify him from an Action upon his Promise not to release. *R.* 1 *Rol.* 431. *l.* 45.

To ſave harmleſs from all Legacies; he ought to indemnify from a Decree in a Court of Equity for a Legacy. *R.* 1 *Rol.* 430. *l.* 5.

But if a Condition be *to ſave harmleſs from all Things contained in an Indenture*, he is not bound to indemnify from a collateral Thing; As, from an Obligation in which he is bound to perform the Covenants in the ſame Indenture. 1 *Rol.* 432. *l.* 35.

Nor, from Actions, in which he has a lawful Defence without the Obligor. 1 *Rol.* 432. *l.* 42.

So a Covenant to indemnify *from all Rents payable to the Leſſor*, is not broken, if the Rent be in arrear. 1 *Rol.* 433. *l.* 10.

Or, if an illegal Diſtreſs be taken for the Rent. *Ibid.*

[If a Covenant be to ſave harmleſs againſt a Seizure made by *A.* it extends to it, whether the Seizure be *tortious* or not; but if a general Covenant to ſave harmleſs, it extends not to *tortious* Acts. *Perry* v. *Edwards*, *M.* 7. *G. Str.* 400.]

So a Condition *to perform an Award, by which* A. *ſhall be acquitted of ſuch a Matter in a Bill in Chancery depending againſt him*, is not broken by the Filing a new Bill againſt him for the ſame Matter, if no Proceſs iſſues againſt him. *R.* 1 *Rol.* 432. *l.* 20.

So, a Condition *to ſave without Damage from all prior Incumbrances by him*; a prior Aſſignment by him to *B.* is not a Breach, if *B.* does not enter nor diſturb the Poſſeſſion. *R.* 1 *Rol.* 430. *l.* 15.

So a Bill in *Chancery*, alledging that a Leaſe was in Truſt for the Leſſor, is no Breach; for it does not meddle with the Poſſeſſion. *R.* 1 *Rol.* 430. *l.* 45.

So, tho' the Words are large, they ſhall not be extended beyond the Intent; as, if a Condition be, to *ſave harmleſs from the Damages* A. *ſhall ſuſtain on Account of a Baſtard*; he ought to indemnify from the Charge of maintaining it, but not from a legal Proſecution againſt *A.* for it. *R. Lut.* 669.

So, if a Covenant be *to ſave harmleſs upon Requeſt*; if a Damage happens before Requeſt, he is bound to indemify: As, if a Statute be extended before Requeſt. *R. Mo.* 189.

(K.) Condition in the Diſjunctive.

(K. 1.) How performed.

IF a Condition be in the Diſjunctive, he who ought to do the firſt Act ſhall have an Election to do the one, or the other. *Co. L.* 145. *a.*

As, if a Condition be *to enfeoff of ſuch or ſuch Land, to pay Gold or Silver, to deliver one Thing or another*; the Obligor has an Election to do the one, or the other. 1 *Rol.* 446. *l.* 20.

So, if it be *to enfeoff, pay, &c. at the Requeſt of the Obligee*; for his Requeſt only aſcertains the Time of the doing it. 1 *Rol.* 446. *l.* 25, 30. 467. *l.* 5.

So, if it be to do *at Mich. at his Requeſt, or at the Feaſt of Eaſter.* 1 *Rol.* 446. *l.* 40.

But where the Diſjunctive goes only to the Time, and that is referred to the Requeſt of the Obligee, it gives the Election to him; As, to do *at Mich. or before, at the Requeſt of* A. 1 *R.* 446. *l.* 35, 37.

If a Condition be that *before Mich. he make a Leaſe for thirty-one Years if* A. *aſſents, otherwiſe, for twenty-one Years*; *A.* does not aſſent; he ought to make a Leaſe for twenty-one Years before *Mich.* 1 *Rol.* 446. *l.* 15.

[*A.* deviſes Lands to Truſtees to pay the Rents to his Son *B.* during Life, then to ſtand ſeized to the Uſe of *B.*'s Wife for Jointure, then to the Uſe of Sons of *B.* then to the Uſe of Daughters of *B.* then to *A.*'s Daughters *C.* and *D.* Proviſo if *B.* marries a Woman without competent Fortune, *or* without the Conſent of the Truſtees, then after *B.*'s Death to ſtand ſeized to the Uſe of *C.* and *D.* *B.* marries a Woman with competent Fortune but without Conſent of Truſtees. This is ſufficient Performance of this Condition Precedent, eſpecially as it is a Condition in Reſtraint of Marriage. *Long* v. *Dennis*, *P.* 7 *G.* 3. 4 *B. M.* 2052.]

(K. 2.) When it ſhall be excuſed.

If the Condition be in the Disjunctive, and the Obligor has an Election to do the one Thing or the other, if one Part becomes impoſſible by Default of the Party, he ſhall not be bound to perform the other Part; As, if it be *to make ſuch Aſſurance to* A. *as* A. *ſhall deviſe, or upon Default to pay* 500l. If *A.* does not tender an Aſſurance, he need not pay the 500*l.* *R.* 1 *Rol.* 446. *l.* 45. 2 *Mod.* 202, 203.

To deliver an Obligation, or execute a Releaſe which A. *ſhall tender*; and he does not tender a Releaſe. *R.* 1 *Rol.* 447. *l.* 10.

So, if one Part becomes impoſſible by the Act of God. *Vide Ante,* (D. 1.)

But where the Election is not affixed to the Obligor till one Part be requeſted by the Obligee; if it be not requeſted, the Obligor ought to do the other Part. 1 *Rol.* 447. *l.* 20.

So, if one Part was impoſſible at the Time of the Making; he ought to do the other Part. 1 *Rol.* 450. *l.* 40, 45.

So, if a Condition be *to make a Leaſe to* A. *for Life before Mich. or to pay to him* 100l. *A.* dies before *Mich.* and before the Leaſe made; he ought to pay 100*l.* to his Executor. *R.* 1 *Sal.* 170.

Or, if a Condition be *that his Son convey to* B. *and his Heirs before Mich. or ſhall pay* 70l. and *B.* dies before *Mich.* he ought to pay the 70*l.* *Semb.* 3 *Mod.* 232.

So, if a Condition be *that a Stranger appear, or pay ſo much*; if he cannot appear, he ought to pay. *R. Ray.* 373.

(K. 3.) What ſhall be a Condition in the Disjunctive.

If a Condition be in the Copulative, but it is impoſſible to be ſo performed; it ſhall be taken in the Disjunctive; As, if it be *that* A. *and his Heirs or Executors* do ſuch a Thing. 1 *Rol.* 444. *l.* 20.

That A. *and his Aſſigns* do it. 1 *Rol.* 444. *l.* 25.

(K. 4.) Annuity *pro Conſilio.*

If an Annuity be granted *pro Conſilio impendendo*; he ought to give his Counſel on Demand, for otherwiſe the Annuity determines. 1 *Rol.* 435. *l.* 5.

Otherwiſe, if it was *pro Conſilio impenſo & impendendo.* 1 Rol. 435. l. 10.

But the Grantee need not travel, or do any Thing but give his Counſel, where he may be found. 1 *Rol.* 434. *l.* 30.

Otherwiſe, if a Phyſician, who has an Annuity *pro Conſilio & Auxilio. Semb.* 1 *Rol.* 434. *l.* 40.

So, if it be granted *pro Servitio & Conſilio.* 1 *Rol.* 434. *l.* 45.

And he need not travel with him, tho' the other is willing to pay his Charges. 1 *Rol.* 434. *l.* 47.

So he need not ſet his Hand to a Bill in *Chancery.* *R.* 1 *Rol.* 434. *l.* 50.

So, if the Grantor does not diſcloſe his Caſe, the Grantee ſhall be excuſed. 1 *Rol.* 434. *l.* 33.

So, if the Grantee gives ſuch Counſel as he is able; it is ſufficient, tho' it be not good. 1 *Rol.* 434. *l.* 35.

(L) When Non-performance ſhall be excuſed.

(L. 1.) If done as near to the Condition as it can be.

IF the Condition be performed in Subſtance, it is ſufficient. *Vide Ante,* (G. 14.)

So, if it be performed as near the Intent of the Condition as can be: As, if a Condition be, *that the Feoffee ſhall give the Land to the Feoffor and his Wife,*

and the Heirs of their Bodies, &c. and before the Eſtate is re-given, the Feoffor dies; the Condition will be performed, if the Feoffee gives it to the Wife for Life without Impeachment of Waſte, Remainder to the Heirs of the Body of the Huſband upon the Wife begotten. *Lit. S.* 352.

Or, *that he ſhall give an Eſtate to a Layman in* Frankalmoigne, (which cannot be;) it is ſufficient if he makes an Eſtate to him for Life. *Co. L.* 219. *b.*

Or, *that he give an Eſtate in* Frankmarriage *to A. with a Daughter of the Feoffor,* (which cannot be;) it is ſufficient if he make an Eſtate to them for their Lives. *Ibid.*

If a Condition be *to enfeoff two before ſuch a Day,* and one dies, he ought to enfeoff the other. *R.* 1 *Rol.* 451. *l.* 2.

Or, *to enfeoff* A. *and his Heirs,* and *A.* dies; he ought to enfeoff the Heir; for [*and*] ſhall be taken as a Disjunctive [*or*]. *R.* 1 *Rol.* 450. *l.* 50.

So, if an Obligation be *to convey to* A. *and his Heirs by Feoffment or Will, &c.* and *A.* dies in the Life-time of the Obligor; he ought to convey to his Heir. *R. Pal.* 552.

So, as well when the Condition is to defeat as to create an Eſtate. *Semb. Cont. Co. L.* 219. *b.* But the Inſtances there *acc.* where no Prejudice enſues to the Parties.

As, if a Condition be, *that if* A. *and* B. *pay ſuch a Sum, at ſuch a Day, the Feoffment ſhall be void,* and *A.* dies before the Day; *B.* may pay it. *Co. L.* 219. *b.*

(L. 2.) If the Feoffee accepts another Thing in Satisfaction.

(L. 2.) When it may be accepted.

So, if a Condition be *to pay ſuch a Sum at ſuch a Day,* and the Feoffee or Obligee accepts a Horſe, *&c.* or other collateral Thing in Satisfaction. *Co. L.* 212. *b. R.* 9 *Co.* 79. *Peytoe.* 1 *Rol.* 456. *l.* 5.

So, if a Condition be, *that a Stranger pay to the Feoffee;* and he accepts a collateral Thing in Satisfaction. *Co. L.* 212. *b.*

Or, if he accepts a leſs Sum before the Day, in Satisfaction. *Ibid.*

Or, if he accepts a leſs Sum at the Day, and gives an Acquittance for the Whole in Satisfaction, under his Seal; for the Deed makes it to be in Satisfaction of the Whole. *Ibid.*

Or, accounts with the Obligor at the Day, and diſcounts ſo much due from the Obligee to him. 1 *Rol.* 471. *l.* 5.

So, if the Feoffee or Obligee accepts a *Choſe in Action,* in Satisfaction; as, a Statute for Payment of Money at a ſubſequent Day. *Co. L.* 212. *b.*

Or, another Obligation for Payment at a future Day. *Ibid. D. Cont.* 2 *Cro.* 100. *& Semb.* that the Law is *Cont. Vide Poſt,* (L. 3.) (*Vide* 1 *Mod.* 225. *Hob.* 68. *Cro. Car.* 86.)

So, if he accepts a Copyhold ſurrendered to his Uſe, in Satisfaction. *R.* 1 *Rol.* 471. *l.* 25.

So, if a Promiſe or Contract, without Deed, be to do a collateral Thing; Money, or another Thing may be accepted in Satisfaction. 9 *Co.* 79. *b.*

(L. 3.) When not.

But if a Condition be to do a collateral Thing; the Feoffee or Obligee cannot accept Money, or another Thing in Satisfaction; for a Contract in Writing for a collateral Thing ſhall not be altered by an Accord without Writing. *Co. L.* 212. *b. R.* 9 *Co.* 79. *R.* 1 *Rol.* 455. *l.* 50.

As, if a Condition be *to deliver an Horſe, &c.* if the Obligee accepts Money, or other Thing in Satisfaction, it is not ſufficient. *Co. L.* 212. *b.*

Or, *to give a Recognizance for* 20*l.* and he accepts 20*l. Ibid.*

To perform Covenants in an Indenture. R. Dal. 106.

So, if a Condition be *to pay Money to a Stranger;* it ought to be performed ſtrictly, and it is not ſufficient that the Stranger accepts a collateral Thing in Satisfaction. *Co. L.* 212. *b.*

So it is not ſufficient, if the Feoffee or Obligee accepts a leſs Sum in Satisfaction, at the Day, without a Deed which acquits the Whole. *Co. L.* 212. *b.* for a leſs Sum cannot be a Satisfaction for a greater.

And

And it ought to be a real and full Satisfaction. *Vide Accord*, (A. 1, 2. B. 1, &c.)

So it is not ſufficient, if the Conuſee of a Statute, or Recognizance accepts an Obligation in Satisfaction; for it is of leſs Force. 1 *Rol.* 470. *l.* 37.

So it is not ſufficient, if the Obligee, after Judgment upon an Obligation, accepts another Obligation for a greater Sum in Satisfaction. *R.* 2 *Cro.* 579.

Or, after the Day of Payment, accepts a Statute, or Recognizance (which is of a higher Nature) in Satisfaction. *R.* 6 *Co.* 44. *b.* 45. *b.* *Cro. Car.* 86. 1 *Rol.* 470. *l.* 50. *Vide Ante.* (L. 2.)

Or, after the Day, accepts another Obligation in Satisfaction. 2 *Cro.* 579. *Cro. Car.* 86.

Or, at the Day, accepts another Obligation for the ſame Sum at a future Day, in Satisfaction. *Vide Ante*, (L. 2.)

Or, another Obligation by the Obligor and another. *R. Hob.* 68, 9. *Cro. El.* 727. 1 *Rol.* 470. *l.* 30.

Or, another Obligation with a Penalty, where the firſt was ſingle. *R. Cro. El.* 716, 727.

So, if the Obligee, before the Day of Payment, accepts another Obligation for the ſame Sum. *D.* 2 *Cro.* 100. *R.* if he accepts an Obligation generally. *Cro. El.* 716, 727. *Cro. Car.* 86.

Or, a Bill ſealed. *R. Mo.* 872.

So, if a Condition be *to pay Money*; an Agreement to accept a collateral Thing in Satisfaction is not ſufficient, if it be not executed. 1 *Rol.* 456. *l.* 15, *ad* 30. *Vide Accord*, (B. 1, &c.) 1 *Rol.* 470. *l.* 40.

(L. 4.) By Default of the Party.

(L. 4.) As. upon Tender and Refuſal.

So the Non-performance of a Condition may be excuſed by the Default of the Feoffee or Obligee; As, if the Feoffor or Obligor makes a legal Tender of the Money, to the Feoffee or Obligee, at the Day and Place appointed, and he refuſes to accept it. *Co. L.* 207.

Who may make a Tender, and to whom, *Vide Ante*, (G. 1, 2.) and at what Time and Place, *Vide Ante*, (G. 3, &c. G. 9, &c.)

A Tender may be in Bags or Purſes, without ſhewing or reckoning the Money. *Co. L.* 208. *a.*

And it is ſufficient, if the whole Sum be in the Bag, or more. *R.* 5 *Co.* 115. *a*,

So, if a Condition be to enfeoff, &c. upon Payment of ſo much Money; a Tender and Refuſal is *tantamount*. *Dal.* 106.

If, purſuant to a Condition upon a Feoffment, &c. the Money be duly tendered, and refuſed; the Feoffee loſes the Money for ever; for it is a Sum in Groſs, collateral to the Land, and he has not any Remedy for it by Law. *Lit. S.* 335, 338.

So, if a Condition of an Obligation be, to do a collateral Thing, as to deliver Corn, Timber, &c. Tender and Refuſal is a perpetual Bar. *Co. L.* 207. *a.*

So, if a Statute, Recognizance, or Obligation be ſingle, and afterwards there be a Defeazance that it ſhall be void upon Payment of a leſs Sum; if ſuch Sum be tendred and refuſed, it ſhall be loſt for ever; for it is collateral. *Co. L.* 207. *a.*

Otherwiſe, if an Obligation be for Payment of a leſs Sum; this being a Duty and Part of the Obligation, ſhall not be loſt by Tender and Refuſal, for if he pleads a Tender he ſhall ſay *Uncore priſt*. *Co. L.* 207. *a.*

How a Tender ſhall be pleaded, *Vide Pleader*, (2 G. 2—2 *W.* 28, 49.—3 *K.* 23.—3 *M.* 36.)

So, if a Condition be to do any collateral Act, if it be duly tendred and refuſed, the Performance ſhall be excuſed. 1 *Rol.* 458. *l.* 15. 455. *l.* 20, *ad* 35. *R.* 3 *Lev.* 24.

(L. 5.) By voluntary Abſence.

So the Performance of a Condition ſhall be excuſed by the Abſence of the Feoffee or Obligee, when his Preſence was neceſſary for the Performance; as, if

if a Condition be, *that he enfeoff the Obligee*, and he, having Notice of the Time, is abſent. 1 *Rol.* 457. *l.* 30, 32.

If a Condition be *to pay Rent*, and the Leſſee is ready, but no body comes to receive it for the Leſſor. 1 *Rol.* 459. *l.* 35.

But if his Preſence is not neceſſary, his Abſence ſhall not excuſe, tho' the Act is to be done to him; as, if a Condition be *to ſing Matins at ſuch a Day, in his Manor, for A. and his Family*; tho' they be abſent, he ought to ſing. 1 *Rol.* 457. *l.* 45.

To give a Statute, or Obligation to the Obligee; for it may be done in the Abſence of the Obligee. 1 *Rol.* 457. *l.* 40.

To grant an Eſtate to one for Life, Remainder to B. tho' *B.* be abſent, the Condition ſhall not be excuſed. 1 *Rol.* 457. *l.* 45.

So, if a Covenant be *that an Horſe ſhall run, &c. giving Notice to A.* tho' *A.* abſconds, by which Notice cannot be given, yet the Horſe ought to run the Race. *R.* 1 *Sal.* 214.

So the Performance of a Condition ſhall be excuſed by the Obſtruction of the Obligee: As, if a Condition be *to build an Houſe*; and he, or another by his Order, hinders his coming upon the Land. 1 *Rol.* 453. *l.* 50. (L. 6.) By the Obſtruction of the Obligee.

Or, ſays that it ſhall not be built. 1 *Rol.* 454. *l.* 2.

Or, interrupts the Performance. 1 *Rol.* 454. *l.* 5, 20.

So, if a Condition be *that the Leſſee ſhall leave a Houſe in good Plight*; and Fire out of the Chimney of the Leſſor next to it conſumes it. *R.* 1 *Rol.* 454. *l.* 15.

If an Annuity be granted, *till a Benefice be given to the Grantee*, and he is preſented, but found unfit. *R.* 1 *Rol.* 435. *l.* 17.

So, if there be a Recognizance to the King for Appearance; and the Party is impriſoned by *A.* and *B.* who act by lawful Authority of the King. *Semb. Mo.* 122.

But it ought to be an Obſtruction which diſables the Performance. *Vide Poſt*, (M. 5.—N.)

And Performance ſhall not be excuſed by the Negligence of the Obligor.

Nor by the Act of a Stranger. *Vide Poſt*, (L. 14.)

So the Non-performance of a Condition ſhall be excuſed by the Default of him who ought to do the firſt Act; As, if a Condition be *to reſign a Benefice for a Penſion, to be agreed between them*; the Obligee ought to agree the Penſion, and tender the Deed of it. 1 *Rol.* 458. *l.* 10. (L. 7.) By Default in doing the firſt Act. *Who ought to do the firſt Act. Vide Election.* (A. 2.)

To enfeoff ſuch an one as the Obligee or Feoffee ſhall name; he ought to give Notice whom he names. 1 *Rol.* 463. *l.* 2.

If a Condition be *that a Bailiff ſhall arreſt a Man at the Suit of B.* he need not, till *B.* delivers to him a proper Warrant; for this belongs to *B.* and it would be Maintenance in the Obligor, and the Law will underſtand the Words as is proper. *R.* 1 *Rol.* 465. *l.* 40.

That a Bell ſhall be carried to the Houſe of the Obligor, by the Men of M. *and there weighed, and put in the Fire in their Preſence, and then the Obligor ſhall make a Bell in Tone and Sound agreeable to the others*; it ſhall be weighed and put into the Fire by the Obligor, for it belongs to his Occupation. 1 *Rol.* 465. *l.* 50. *Pl. Com.* 15. *b.*

So, if a Condition be to do a Thing upon the Performance of an Act by the Feoffee or Obligee, which is ſecret, and lies only in his Breaſt, the Performance of the Condition is excuſed, till the Feoffee or Obligee gives Notice that he has performed the firſt Act: As, if a Condition, Covenant, or Promiſe be *to pay as much for Goods as every other pays*; the Obligee ſhall give Notice how much another pays. 1 *Rol.* 463. *l.* 25. *Hob.* 51. *R.* 2 *Cro.* 432. 1 *Rol.* 468. *l.* 50. (L. 8.) In not giving Notice. When Notice is neceſſary. *Vide Poſt*, (L. 9)

To account before ſuch Auditors as the Obligee ſhall name; he ought to give Notice what Auditors he has aſſigned. *R.* 1 *Kol.* 462. *l.* 50.

To execute such Deed or Assurance as the Obligee or his Counsel shall devise. *Vide Ante*, (H).

To pay so much to A. and B. at their full Age; the Condition is not broken till Demand, or Notice of full Age. *R.* 2 *Cro.* 57.

So a Title to Land shall not be defeated by a secret Condition, or Conveyance, to which he is a Stranger, without Notice of it given to him: As, if a Father covenants to stand seised, or devises to his eldest Son, upon Condition that he do such a Thing; the Heir shall not lose his Estate by the Non-performance of the Condition, without Notice of it. *R.* 8 *Co.* 92. *a. Frances.* *R.* 3 *Mod.* 34. *Vide Post*, (L. 9.)

So if a Condition be, *to pay Rent to the Lessor or his Assigns*; the Lessee shall not lose his Estate by Non-payment to the Bargainee of the Reversion, without Notice of it. *Per Wray*, 3 *Leo.* 96. *Per Popb.* 5 *Co.* 113. *Agreed*, 8 *Co.* 92. *Vide Post*, (O. 1, 2.) *Vide Copyhold*, (M. 4.)

If a Condition be, *that if his Heir does not pay Rent, it shall be to his Executors, and if they do not pay, to his younger Son*; the Estate shall not be forfeited by the Non-payment of the Executors, till Notice that the Heir did not pay. *R.* 2 *Cro.* 145.

When Notice shall be given of the Time of performing a Condition, *Vide Ante*, (G. 9.)

How Notice shall be given, *Vide Pleader*, (C. 73, &c.)

How Request shall be made, *Vide Post*, (L. 11.)

(L. 9.) When not.

But generally, every one, who has an Interest in Land, shall take Notice at his Peril of Acts done concerning the same Land: And therefore, the Grantee or Bargainee of the Reversion shall distrain for Rent, shall have Waste, without Notice to the Lessee of the Assignment. 5 *Co.* 113.

If a Bailiff of a Bishop collects Rent of a Lessee of his Predecessor, not warranted by *St.* 1 *El.* 19. among other Rents, and pays it to the Bishop; this Acceptance of the Rent affirms the Lease, without other Notice. *R. Cro. Car.* 95. 1 *Rol.* 476. *l.* 15.

Especially, where no one is bound to give Notice: As, if a Husband seised for Life, Remainder to his Wife for Life, Remainder to his Son in Tail, makes a Feoffment with Warranty, which bars the Son, and after his Death the Wife joins with the Son in a Fine; the Estate of the Wife is forfeited, without Notice of the Feoffment. *R. Cro. Car.* 392. 1 *Rol.* 856. *l.* 25.

If a Woman Lessor marries, the Lessee ought to take Notice, and pay his Rent to the Husband; for if he afterward pays to the Wife, without his Consent, he shall pay over again to the Husband. *R.* 2 *Cro.* (617.)

So every one ought to take Notice of a Condition, &c. contained in the same Deed by which he claims: As, if a Devise be to *A.* upon Condition *that he do not marry without Consent*; the Devisee shall take Notice of the Condition at his Peril; for it is limited in the same Conveyance by which he claims, and no one is bound to give Notice. *R. Mod.* 87, 311. 1 *Vent.* 204. 2 *Lev.* 22. *Vide infra.*

If a Devise be *for Charitable Uses, and if not performed, that it shall be to the Mayor and Commonalty of* London, there needs no Notice. *R. Cro. Car.* 577.

So, if a Fine be *to the Use of A. in Fee, but if B. pays* 10 *s. before Mich. to him in Fee*; *B.* dies; his Heir shall take Notice at his Peril of this Condition. *R.* 1 *Rol.* 469. *l.* 25.

So, if a Devise be to an Heir, upon Condition *that he do not marry under* 1000 *l.* he ought to take Notice of the Condition; for he takes his Estate by the same Will, and no one is bound to give Notice, *R. Cart.* 172. And there it is said, that this differs from the Case of *Frances*, 8 *Co.* 92. where the Condition was, that he should not hinder the Executor doing such an Act, which is named by the Will, and cannot be known, without Notice of it. *Cart.* 172.

So, if a Devise be upon Condition, *that he do not marry without Consent*, &c. *R. Ray* 237. 2 *Lev.* 22. *Vide supra.*

Tho'

Tho' the Deviſee be an Infant. *R.* 1 *Mod.* 86. 1 *Vent.* 200. *Vide Enfant.*

So, if a Condition, Covenant, or Promiſe be to do an Act to a Stranger, or upon Performance of an Act by a Stranger, there needs no Notice; for it lies equally in the Knowledge of the Obligor and Obligee, and the Obligor takes upon himſelf to do it: As, if a Condition be *to pay when A. marries*, there needs no Notice when *A.* marries. *R.* 1 *Rol.* 462. *l.* 10. 468. *l.* 13. *Vide Pleader.* (C. 75.)

Or, *when A. returns into the Realm.* *R.* 2 *Cro.* 492. 1 *Rol.* 463. *l.* 6.

Or, *when A. rides to York five Times in ſix Days.* 1 *Rol.* 463. *l.* 12.

So, *to pay, if A. does not pay.* *R.* 2 *Cro.* 684. *R.* 1 *Rol.* 462. *l.* 25. 463. *l.* 45.

To pay ſo much as A. ſhall name. *R.* 2 *Bul.* 144. *R. Cro. Car.* 133. 1 *Rol.* 464. *l.* 5.

To pay for all the Acres above twenty ſo much as meaſured by A. *R.* 1 *Rol.* 462. *l.* 5.

To diſcharge from all Eſcapes by A. *R. Hob.* 14.

To ſtand to the Award of A. *R.* 1 *Rol.* 464. *l.* 40. 468. *l.* 7.

Or, *to pay all Arrears which ſhall be found upon Account before A.* 8 *Co.* 92. *b.* 1 *Rol.* 468. *l.* 5.

To pay the Coſts which ſhall appear due by his Attorney's Bill. *R.* 1 *Rol.* 467. *l.* 30. *R.* 4 *Mod.* 230.

To pay ſo much as ſhall be recovered by A. 1 *Rol.* 468. *l.* 10.

So, if a Condition, Covenant, or Promiſe be to do, upon the Performance of any certain and particular Act by the Obligee himſelf, he ought to do it, without Notice by the Obligee, that the Act is performed; for he takes it upon him to do it at his Peril: As, if a Condition be *to pay ſo much when the Obligee marries*, there need not be Notice of his Marriage. *R.* 2 *Cro.* 102. 228. *Yel.* 168. *R.* 2 *Cro.* 405. 1 *Rol.* 468. *l.* 30. *R.* 2 *Bul.* 254. *R.* 3 *Bul.* 326. *R. Poph.* 164. *R. Cro. Car.* 34. *Hut.* 80. 1 *Rol.* 463. *l.* 20. *Per Ch. J.* 1 *Sid.* 36.

Or, *when the Obligee delivers a Horſe to B.* *Per Yel.* 1 *Rol.* 461. *l.* 45.

Or, *comes to* London, *&c.* *Per Dod.* 2 *Bul.* 145. *R.* 1 *Rol.* 462. *l.* 15. *Per Warb. Cont. Hob.* 68. *R. Cont.* 1 *Bul.* 44. *Dub. Ow.* 108. *Acc. Hut.* 80. 1 *Rol.* 469. *l.* 5.

Or, *becomes Surety for his Father.* 1 *Leo.* 105. *R.* 2 *Cro.* 287.

So, *to pay ſo much as the Obligee borrows of B.* *Per* 3 *J.* 1 *Bul.* 12. *R.* 1 *Rol.* 467. *l.* 50.

Or, *for ſo many Acres as ſhall appear when they are meaſured.* *R.* 2 *Cro.* 472, 391. 1 *Rol.* 462. *l.* 45. 469. *l.* 10, 15.

Or, *to pay ſo much as he ſhall ſell at to B.* *R.* 2 *Cro.* 432. 1 *Rol.* 463. *l.* 36.

To ſurrender to the Obligee or his Aſſigns upon Demand; he ought to ſurrender to the Aſſignee upon Demand, without Notice of the Aſſignment. *R. Poph.* 136. 1 *Rol.* 465. *l.* 10.

To pay when he delivers Wood to B. to his Uſe. *R.* 1 *Rol.* 464. *l.* 30.

So, *to pay ſo much as will content him for ſuch a Journey*; there need not be Notice how much will content him. *R.* 1 *Leo.* 123.

To repay 20 *l. if he diſlikes ſuch Land*; there need not be Notice that he diſlikes it. *R. Cro. El.* 834. 1 *Rol.* 464. *l.* 20.

To deliver Corn on Shipboard at ſuch a Port; there need not be Notice when the Ship is ready. *R.* 1 *Rol.* 464. *l.* 25.

To pay upon the Return of a Ship from Hamburg *to* D. 1 *Rol.* 469. *l.* 40.

So, if ſeveral are bound by Obligation, Covenant, *&c.* to do an Act, upon Notice to them; Notice to one is ſufficient. *R. Mo.* 555.

So, if an Act ought to be done upon Notice to *B.* the Abſence of *B.* by which Notice cannot be given, excuſes Notice. *R.* 1 *Sal.* 214.

When Notice is not neceſſary of a By-Law, *&c.* *Vide Pleader*, (C. 75.)

If a Condition be, *that the Leſſee repair, and that the Leſſor find Timber*; the Leſſee ought to demand Timber, and give Notice how much will be ſufficient. *R.* 1 *Rol.* 465. *l.* 20. (L. 10.) In not requeſting.

That he inrol a Deed in Guildhall; the other ought to requeſt. 1 *Rol.* 458. *l.* 30.

That he procure his Apprentice his Freedom, if it be requeſted; an expreſs Requeſt is neceſſary. *R. Sal.* 585.

(L. 11.) How a Requeſt ſhall be made. *Vide Pleadur.* (C. 69, &c.)

If a Condition be to do upon Requeſt, the Requeſt ought to be certain and expreſs: And therefore, if a Leſſor ought to find Timber to the Leſſee for Repairs, it is not ſufficient that the Leſſee demand Timber, generally, but he ought to notify how much is neceſſary. *R.* 1 *Rol.* 465. *l.* 20.

If a Condition be *to ſurrender a Copyhold upon Requeſt*; it is not ſufficient that he require him to ſeal a Letter of Attorney to make the Surrender, but he ought expreſſly to require a Surrender. *R.* 1 *Rol.* 467. *l.* 5. *Jon.* 314.

So the Requeſt ought to be to the Perſon himſelf, who ought to do it.

And therefore, it is not ſufficient to ſay, that he could not find him, and made Proclamation in the Church, and at ſeveral Markets, to notify his Requeſt. *R.* 1 *Rol.* 443. *l.* 45.

But where a Condition is, *to deliver Poſſeſſion to the Leſſor or his Aſſigns*, who aſſigns to two, a Requeſt by one is ſufficient. *R.* 1 *Rol.* 428. *l.* 10.

So, if a Condition be, *to make him free of a Company at the End of ſeven Years, if he be requeſted*; he ought to make Requeſt the laſt Day of the ſeven Years at a convenient Time before Night, that the Thing may be done. *R. Sal.* 585.

And a Requeſt at any Place is ſufficient, tho' the Thing is to be performed at a certain Place. *Vide Ante*, (G. 9.)

So, if a Condition be to do upon Requeſt, and he is diſabled to perform; there needs no Requeſt, for it would be in vain. *R.* 5 *Co.* 21. *a. Semb. Lut.* 308. *Vide Poſt*, (M. 2, 3.)

(L. 12.) Non-performance ſhall be excuſed by the Act of God.

So the Non-performance of a Condition ſhall be excuſed by Impoſſibility, or the Act of God, if there be no Default in the Party. *Vide Ante*, (D. 1, 2.)

So in a Promiſe, as well as in an Obligation or Condition, if the Party be diſabled by the Act of God before a Breach, he ſhall be excuſed: As, if a Man lends a Horſe to *B.* for his Uſe, who promiſes to re-deliver it upon Requeſt, and the Horſe dies before Requeſt. *R. Pal.* 550.

(L. 13.) Non-performance ſhall be excuſed by Act of Law.

So the Performance of a Condition ſhall be excuſed by an Act of Law, which is neceſſary and inevitable; As, if a Condition be, *that the Feoffee pay ſo much out of the Profits annually to Charitable Uſes*; if he dies, and his Heir be in Ward to the King, the Payment ſhall be excuſed; for it ought to be out of the Profits, which are transferred by Act of Law to the King. *R.* 1 *Rol.* 451. *l.* 30.

But if a Condition be, *that he ſhall be his Attorney in all Pleas*, and he is made Sheriff; this does not excuſe him. 1 *Rol.* 451. *l.* 25.

If it be, *that he pay Rent to* A. *as long as he enjoys the Land*, and he ſurrenders to the Obligee. *R. Mo.* 597.

(L. 14.) But not by the Act of a Stranger.

If a Condition be to do a Thing, and a Stranger interrupts him; that does not excuſe the Performance; As, if he diſſeiſes him. *Vide Poſt*, (M. 5.)

Or, recovers Goods to be delivered. 1 *Rol.* 452. *l.* 5.

Or, impriſons a Perſon, who ought to appear. 1 *Rol.* 452. *l.* 10.

So, if a Condition be *to do a Thing to a Stranger*, who refuſes to accept it; this does not excuſe, for he took upon himſelf to do it. 1 *Rol.* 452. *l.* 30. *ad fin.*

Or,

Or, *to do by Direction, &c. of a Stranger. Lit.* 13.

So, if a Condition be *to ſurrender to a Stranger*; a Surrender to another Perſon, by his Requeſt, is no Performance, for he cannot vary the Condition. *R.* 1 *Rol.* 457. *l.* 15.

Or, *after Recovery to enfeoff a Stranger*; and he accepts it before the Recovery. *Semb.* 1 *Rol.* 453. *l.* 20.

(M) What ſhall be a Breach.

(M. 1.) An Act contrary to the Intent.

BUT it ſhall be a Breach of a Condition, if the Feoffor or Obligor acts contrary to the very Intent of the Condition; as, if a Condition be *for quiet Enjoyment*, and the Leſſor enters upon him wrongfully. 1 *Rol.* 429. *l.* 30, 45. 430. *l.* 20. *Vide Ante*, (G. 12.) *Vide Ante*, (E.—G. 12, &c.) *Vide Chancery.* (2 Q. 2, &c.)

If a Condition be, *that he do not let a Shop-yard, or other Thing appertaining to a Houſe to ſuch a one as ſells Coals*; and he lets the whole Houſe. 1 *Rol.* 427. *l.* 35.

That he do not interrupt in an Office; if a new Officer be made, who ouſts him, yet if the Obligor alſo interrupts, it is a Breach. *R.* 1 *Rol.* 453. *l.* 5.

That he do not make Debate about an Adminiſtration; and he cauſes him to be cited upon it. 1 *Rol.* 434. *l.* 2.

That he do no Waſte; and he permits Waſte. 1 *Rol.* 428. *l.* 20. *Cont. per* 3 *J.* 1 *Rol.* 428. *l.* 30.

That he do not aſſign; and he aſſigns in Equity. *R. Ray.* 460.

If a Condition be, *that he enjoy without the Interruption of any*; a Proſecution in a Court of Equity is a Breach. *R. Ray.* 371. *Per Dy. Cont.* 3 *Leo.* 71.

That he permits him to reap Corn; a Prohibition by *Parol* is a Breach. *Ray.* 371.

If a Condition be, *that the Heir do not diſturb by Suit or otherwiſe*, if he enters upon him it will be a Breach. 2 *Mod.* 7.

So, if a Condition be, *that he inſtruct him as his Apprentice in Chirurgery, and maintain and employ him* in Domo & in Servitio, *for ſo many Years*; if he ſends him to the *Indies* with expert Chirurgeons for his better Inſtruction, it will be a Breach. *R.* 1 *Rol.* 427. *l.* 50. *Hob.* 134.

Otherwiſe, if he ſends him ſeveral Journies, within the Kingdom, where he returns after the Cure performed. 1 *Rol.* 445. *l.* 12. *Hob.* 134.

Or, if he ſends him out of the Kingdom, when the Nature of the Service requires it: As, if he was Apprentice to a Merchant or Sailor. 1 *Rol.* 428. *l.* 5. 445. *l.* 15. *Hob.* 135.

If a Condition be, *that he do not deviſe a Term for Years to* A.; and he deviſes it, but his Executor does not aſſent; yet it ſhall be a Breach, for he did all that was in him to deviſe it. *Per* 3 *J.* 1 *Rol.* 428. *l.* 45. 2 *Cro.* 75.

So, if he deviſes it to his Executor for Payment of Debts; tho' his Executor would have it without a Deviſe. 1 *Rol.* 428. *l.* 52.

So, if a Condition be, *that he do not alien a Term*; and he deviſes it to his Executor. *R.* 1 *Rol.* 429. *l.* 5.

That he do not grant a Reverſion without Licence, and he grants, but the Leſſee does not attorn. *Per* 3 *J.* 1 *Rol.* 429. *l.* 10.

That he do not aſſign, ſo that it comes to A. and he aſſigns to *B.* for he puts it in the Power of *B.* to aſſign to *A.* *R.* 1 *Rol.* 429. *l.* 15.

That the Leſſee or his Aſſigns do not alien; and the Executrix of the Leſſee takes Huſband, who aliens. *Semb. Dy.* 6. *b.*

(M. 2.) By a Diſability to perform.

So a Condition ſhall be broken, if the Party has diſabled himſelf to perform it: As, if a Condition be *to enfeoff the Feoffor*, and he enfeoffs a Stranger. *Lit.* 355. 1 *Rol.* 447. *l.* 40.

Or, makes an Eſtate in Tail, or for Life, to a Stranger. *Lit. S.* 355.

Or, enters into Religion. *Co. L.* 221. *b.*

Or, ſuffers a Recovery againſt him by Default. *Co. L.* 222. *b.* if Execution be ſued upon it. 1 *Rol.* 447. *l.* 45.

Or, a real Recovery be againſt him, and Execution thereupon. 1 *Rol.* 448. *l.* 25.

(M. 3.) Or to perform in the ſame Plight.

So, if he be diſabled to perform in the ſame Plight and Condition that it was when the Condition was created. *Co. L.* 221. *a.*

As, if a Condition be, *to enfeoff*, and he leaſes for Years to another. *Lit. S.* 356. *R.* 1 *Co.* 25. *b.*

Tho' the Leaſe be to commence *in futuro*. *Co. L.* 221. *a.* *R.* 2 *Co.* 59.

Tho' it be only a Poſſibility of a Charge *in futuro*. *Co. L.* 221. *b.*

So, if he takes a Wife: For ſhe will be thereby entitled to Dower, if ſhe ſurvives. *Lit. S.* 357.

So, if a Woman takes Huſband. *Semb. Hard.* 463.

So, if he grants a Rent-charge out of the Land. *Co. L.* 221. *b.* 222. 1 *Rol.* 447. *l.* 50.

Or, acknowledges a Statute or Recognizance. *Co. L.* 222. *a.*

Or, a Judgment be againſt him. *Ibid.*

So, if a Condition be, *that he re-enfeoff during his Life*, and he dies; the Condition is broken. *Co. L.* 222. *b.*

That he re-grant an Advowſon, and before he does it the Church becomes void; the Condition is broken. *Co. L.* 222. *b.* *Vide Ante*, (G. 5.)

If a Condition be, *that he deliver an Obligation*, and he ſues and recovers upon it, and then delivers it; it ſhall be a Breach of the Condition, for it ought to be delivered in the ſame Plight as it was at the Time of the Condition created. *R.* 1 *Rol.* 447. *l.* 30.

Or, *that he cancel a Statute, Recognizance, &c.* and he extends it, and then cancels it. *R. Ray.* 25. 1 *Sid.* 48.

And if, before the Condition broken, the other ought to do the firſt Act, he need not do it, when the Party has diſabled himſelf to perform the Condition: As, if the Obligor ought to make a new Leaſe upon a Surrender of the old; if he levies a Fine by which he cannot make a new Leaſe, the Condition is broken, tho' the other does not ſurrender. *R.* 5 *Co.* 21. *Cro. El.* 450, 479. *Vide Ante*, (L. 11.)

(M. 4.) Tho' the Diſability be afterwards removed.

And if a Feoffee, *&c.* be at any Time diſabled by himſelf to perform; the Condition ſhall be broken, tho' the Diſability be afterwards removed, and the Feoffor may re-enter after the Removal: As, if after a Feoffment to a Stranger the Feoffee takes back an Eſtate to him and his Heirs, the Feoffor may enter for the Condition broken. *Co. L.* 221. *b.* 1 *Rol.* 448. *B.*

So, if the Feoffee enters into Religion, and is deraigned before the Day limited for Performance of the Condition. *Co. L.* 221. *b.*

Or, the Wife dies. *Ibid.*

Or, a Rent-charge determines. *Co. L.* 222. *a.*

Or, the Grantee chooſes to have a Writ of Annuity; by Reaſon of which the Land was never charged. *Ibid.*

But if a Diſability on the Part of a Feoffor be removed before the Time of Performance, the Condition may afterwards be well performed: As, if a Condition be *to pay ſo much to the Feoffor or his Heirs, before ſuch a Day*; if the Feoffor be attainted for Treaſon or Felony, but before the Day the Heir is reſtored, it ought to be paid. *Co. L.* 221. *b.*

(M. 5.) What ſhall not be a Diſability.

But if a Condition be *to enfeoff*, and the Feoffee be diſſeiſed; this is no Diſability, nor Breach of the Condition; for he may enter upon the Diſſeiſor, and make the Feoffment. 1 *Rol.* 453. *l.* 40.

So, if he be diſſeiſed by the Feoffor or Obligee himſelf. *Ibid.*

So, if during the Diſſeiſin the Feoffee takes a Wife, acknowledges a Statute, or Recognizance, *&c.* which dies, or is diſcharged, and then he re-enters; the Condition is not broken, for there never was any Poſſibility of Charge upon the Land. *Co. L.* 222. *a.* *R.* 2 *Co.* 60.

So, if Joint-tenants are bound, with Condition to convey, *&c.* and one takes a Wife; for ſhe has no Title of Dower, if her Huſband does not ſurvive. *Hard.* 463.

So, if a Condition be, *not to permit a Whore in his Houſe after Warning*; and he warns ſuch a Woman, but afterwards commands her Stay; this Command does not diſable the Removal, and therefore does not excuſe the Breach. 1 *Rol.* 454. *l.* 25. 8 *Co.* 91. *b.*

If the Feoffee be diſſeiſed by the Obligee or Feoffor himſelf, and he does not enter and make the Feoffment within the Time limited; it will be a Breach.

So, if a Condition be, *that the Leſſee ſhall drain off Water before ſuch a Day*, and the Leſſor enters, and continues in Poſſeſſion till the Day; it will be a Breach. *R.* 1 *Rol.* 453. *l.* 45.

(N) What ſhall not be a Breach.

BUT if a Condition be, *that he permit the Executor to take Goods*; a verbal Denial is no Breach, but there ought to be ſome Act, as Reſiſtance, ſhutting up the Houſe, *&c.* *R.* 8 *Co.* 91. 1 *Rol.* 430. *l.* 50.

If it be, *that he do not moleſt, vex, &c. any Copyholder paying his Services*; an Entry upon him to beat him is no Breach, if he do not ouſt him of his Copyhold. *R. Cro. El.* 421. *Mo.* 402.

[*A.* demiſes Lands to *B.* for 21 Years, with Proviſo of Re-entry on Breach of any of the Covenants; covenant that *B.* ſhall not *aſſign, transfer or ſet over*, OR OTHERWISE DO OR PUT AWAY, *this preſent Indenture of Demiſe, or the Premiſſes hereby demiſed*, OR ANY PART THEREOF. (*N.* The Words *ſhall not demiſe*, not here). *B.* by Indenture demiſes for 14 Years; this is not a Breach of the Covenant or Condition. *Per tot. Curiam. Cruſſe* v. *Bugby*, *T.* 11 *G.* 3. 3 *Wilſ.* 234. *Q.* What would be a Breach? Or, by what Means is a Tenant to be reſtrained from acting in this Manner?]

[Agreement that *A.* ſhall pay *B.* 8*s. per* Week during his Life and his Wife's, and the Survivor, and that *B.* ſhall not ſell News-papers. *B.* dies and his Wife ſells News-papers, this is not a Breach, and *A.* muſt continue to pay the 8*s.* *Cooke* v. *Colcraft*, *H.* 13 *G.* 3. 3 *Wilſ.* 380.]

[Bond from *A. B.* and *C.* with Condition that *A.* ſhall faithfully ſerve *D.* a Brewer, as *a Broad (an Abroad)* Clerk, and pay him all Monies received for him. *D.* afterwards takes a Partner; *A.* continues in their joint Service, receives Money on their Account, and does not pay it; this is not a Breach in the Sureties. *Wright* v. *Ruſſell*, *H.* 14 *G.* 3. 3 *Wilſ.* 530.]

Vide Ante, (M. 1, 5.)

(O) Who ſhall take Advantage of a Condition broken.

(O. 1.) By the Common Law.

IF a Condition in Deed be broken, none ſhall take Advantage of it by Re-entry, but the Feoffor or his Heirs; for a Re-entry cannot be reſerved, or given but to the Feoffor, Donor, Leſſor, or his Heirs. *Lit. S.* 347.

[A Right

[A Right of Entry always ſuppoſes an Eſtate; and if an Eſtate is granted to a Man, reſerving Rent, and in Default of Payment, Right of Entry is granted to a Stranger, it is void. *Smith* v. *Packhurſt*. *Opinion of the twelve Judges in the Houſe of Lords*, 1742. 3 *Atkyns* 134.]

And it may be reſerved to the Heir, where the Feoffor himſelf cannot take Advantage of it. *Co. L.* 214. *b.*

And a Guardian in *Chivalry*, or *Socage*, may enter in Right of the Heir. *Co. L.* 215. *b.*

So, if a Condition to an Eſtate by a Corporation be broken, the Succeſſor may take Advantage of it. *Co. L.* 214. *b.* *R. Mo.* 52.

So the King may enter in Right of an Infant in his Wardſhip. 1 *Rol.* 473. *l.* 47, 50.

So, if it be annexed to a Term for Years, the Executor or Adminiſtrator may. *Co. L.* 214. *b.*

So an Heir, Succeſſor, *&c.* may take Advantage of a Condition in Deed broken in the Time of his Anceſtor, Predeceſſor, or in Vacation. *R. Mo.* 52.

But by the Common Law, the Aſſignee or Grantee of a Reverſion could not enter for a Condition broken; for to prevent all Maintenance, *&c.* the Common Law did not allow the Aſſignment of a *Choſe in Action*, or of a Title to Entry, or Re-entry. *Co. L.* 214.

So, for a Condition broken upon a Leaſe by *Ceſtuy que Uſe*, the Feoffees could not enter, tho' they are privy in Eſtate. *Co. L.* 215. *a.*

Nor the Lord by Eſcheat. *Lit. S.* 348.

Nor any Aſſignee in Deed, or in Law. *Co. L.* 215. *b.*

Nor a Perſon in Remainder. 1 *Rol.* 473. *l.* 44.

Yet, by the Common Law, if a Condition in Law annexed to the Eſtate is broken; the Aſſignee of the Reverſion ſhall have Advantage of it; as, if Leſſee for Life commits a Forfeiture. *Co. L.* 215. *a.*

So, the Lord by Eſcheat, and every one who has the Land, for a Breach in his Time. *Ibid.*

So, if by a Condition broken, the Eſtate ceaſes without Entry, the Aſſignee ſhall have Advantage of it: As, if a Leaſe for Years be, upon Condition, *that if ſuch a Thing be done, it ſhall be void*; for by Breach of the Condition it is abſolutely determined. *Co. L.* 214. *b.* 1 *Rol.* 473. *l.* 55.

Otherwiſe, if a Leaſe for Life, *&c.* be, upon Condition, *to be void for Non-performance*; for, notwithſtanding thoſe Words, an Eſtate of Freehold will not ceaſe without Entry. *Co. L.* 214. *b.*

Or, if a Leaſe for Years be upon Condition, *that if ſuch a Thing be done, the Leſſor ſhall re-enter*; the Grantee of the Reverſion ſhall not have Advantage of it, for he cannot enter. *Co. L.* 215. *a.*

If a Limitation be annexed to an Eſtate, the Grantee of the Reverſion ſhall take Advantage of it; for the Eſtate determines *ipſo facto* without Entry. *Co. L.* 214. *b.*

So, none can enter for a Condition broken, as Bailiff to another, without his Command. *R. Mo.* 52.

[An Entry by a Stranger without Authority is good, if it be aſſented to afterwards, and will ſupport Ejectment, if the Aſſent be before the Demiſe in the Declaration. *Fitchet* v. *Adams*, *P.* 13 *G.* 2. *Str.* 1128.]

(O. 2.) By the *Stat.* 32 *H.* 8. 34.

And now by the *St.* 32 *H.* 8. 34. a Grantee from the King of any Reverſion, *&c.* and all other Grantees or Aſſignees, *&c.* their Heirs, Executors, Adminiſtrators and Aſſigns, ſhall have like Advantage againſt Leſſees, *&c.* by Entry, *&c.* as the Leſſors or Grantors themſelves.

And therefore, every Grantee of a Reverſion by the King, or a Common Perſon, ſhall take Advantage, by this Statute, of a Condition broken. *Co. L.* 215. *a.*

So an Aſſignee of the King's Succeſſor, tho' the King only be named. *Ibid.*

So, a Grantee of the Reverſion by Bargain and Sale enrolled, tho' he is not in from the Bargainor in the *Per*, but in the *Poſt* by the Stat. of Uſes, yet he is an Aſſignee within the Stat. for he claims by the Bargainor. *Co. L.* 215. *a.* 3 *Co.* 62. *b.* *R. Mo.* 98. 4 *Leo.* 29.

So, if a Reverſion be granted to the Uſe of another. *Co. L.* 215. *b.*

So a Grantee of a Reverſion only for Life or Years, ſhall take Advantage of a Condition. *Co. L.* 215. *a.*

So, if a Deviſe be for Years, rendring Rent, upon Condition, and by the ſame Will the Inheritance is deviſed to *A.* and his Heirs; *A.* ſhall have the Reverſion, and ſhall take Advantage of the Condition, tho' it was not a Reverſion in the Deviſor. *R.* 2 *Leo.* 33.

So, if a Bargainee of a Reverſion, before Attornment, conveys to *B.* to whom the Leſſee attorns; *B.* ſhall take Advantage of a Condition, tho' his Grantor could not for want of Attornment. *R.* 5 *Co.* 112. *b.* *Cro. El.* 833.

So an Aſſignee of an Aſſignee *in perpetuum*. 4 *Leo.* 29.

But an Aſſignee of a Reverſion by Bargain and Sale, by Grant, Feoffment, or Fine, ſhall not take Advantage of a Condition broken, before Notice of the Aſſignment. *Co. L.* 215. *a. b.* *Vide Ante*, (L. 8.)

And by the *St.* 32 *H.* 8. 34. An Aſſignee of a Reverſion ſhall not take Advantage of a Condition annexed to an Eſtate-tail; for the Statute ſpeaks only of Leſſees. *Co. L.* 215. *a.*

So a Lord by Eſcheat, who claims only by Act of Law, ſhall not be an Aſſignee within this Stat. to take Advantage of a Condition broken. *Co. L.* 215. *b.*

Nor a Lord of a Villein; nor he who enters for *Mortmain*. *Ibid.*

So an Aſſignee of Part of a Reverſion ſhall not take Advantage of a Condition; as, if a Leaſe be of three Acres upon Condition; the Aſſignee of the Reverſion of two Acres ſhall not enter if the Condition be broken; for the Condition being entire, cannot be apportioned by the Act of the Parties, but ſhall be deſtroyed. *Co. L.* 215. *a.* *R. Dy.* 309. 5 *Co.* 55. *b.* 1 *Rol.* 472. *l.* 35. *R. Mo.* 98. *R. Cro. El.* 833. 4 *Leo.* 27. *Vide Poſt*, (Q.)

Otherwiſe in the Caſe of the King; for the King ſhall have Advantage of the Breach. *Co. L.* 215. *a.* *Dub. Mo.* 204. *R.* 5 *Co.* 56. *a.*

So a Condition may be apportioned by Act of Law; as, if a Man makes a Leaſe of two Acres, one of the Nature of *Borough-Engliſh*, the other at Common Law, upon Condition, and dies having two Sons; each may enter on a Breach, into his Acre. *Co. L.* 215. *a.* *Dy.* 309.

So it may be apportioned, by the Wrong and Act of the Leſſee. *Co. L.* 215. *a.*

So an Aſſignee of a Reverſion ſhall not take Advantage of a Breach of every Condition, but only of a Condition for Payment of Rent, for not doing Waſte, or other Matter of like Nature: For tho' the Stat. ſpeaks of *(other Forfeiture,)* it ſhall be underſtood only of other Forfeiture of the ſame Nature. *Co. L.* 215. *b.*

As, of a Condition to do a Thing incident to the Reverſion, as Payment of Rent is. *Ibid.*

Or, to deduct out of a Rent-charge if he be diſturbed. 4 *Mod.* 82.

Or, for the Benefit of the Eſtate, as is the not doing Waſte. *Co. L.* 215. *b.*

So is a Condition for repairing Houſes, Fences, *&c.* *Ibid.*

For preſerving the Wood. *Ibid.*

But an Aſſignee ſhall not take Advantage of a Condition for Payment of a Sum in Groſs. *Ibid.*

Or, for Delivery of Corn, Wood, *&c.* *Ibid.*

Or, of a Condition, that the Leſſee ſhall not aſſign without Licence. *Semb.* *Ray.* 250.

(O. 3.) How he ſhall enter for a Condition broken.

(O. 3.) Where an Entry is given till ſatisfied.

A Condition to a Feoffment, *&c.* may give an Entry generally, or a ſpecial Entry; as, *till he be ſatisfied, &c.*

If a Condition be, *that he ſhall enter and hold the Land till he be ſatisfied*; he ſhall have the Land only in Nature of a Diſtreſs. *Lit. S.* 327.

If a Condition be, *that he ſhall have the Land till he be thereof ſatisfied*, or Words which are *tantamount*; the Profits of the Land ſhall be in Part of Satisfaction. *Co. L.* 203. *a.*

But where a Condition is, *that he ſhall have the Land till he be ſatisfied the Rent to be paid*, without ſaying *thereof*, or to the ſame Effect; the Profits do not go in Satisfaction, but ſhall be taken to his own Uſe, as a Penalty to enforce the Payment. *Ibid.*

If the Profits are in Part of the Satisfaction; when the Rent is ſatisfied by Perception of the Profits, the Feoffee may re-enter. *Co. L.* 203.

Or, if the Rent be ſatisfied in Part by Perception of Profits, and in Part by Payment, or by Tender and Refuſal, which amount to Payment. *Ro. L.* 203. *a.*

If the Profits go in Satisfaction, during his Perception of them, he ſhall not have Debt for the Rent in Arrear. *Ibid.*

So, if they do not go in Satisfaction, where the Eſtate, to which the Condition was annexed, was for Life, *&c.* for the Freehold continues in Leſſee for Life, and then Debt does not lie for the Rent. *Ibid.*

If he, who enters till ſatisfied by the Profits, be interrupted in the Perception of the Profits by the Act of God, as by Wildfire, an Inundation of the Sea, *&c.* which happens without his Default; he ſhall (beyond the Time in which he might have been ſatisfied if there had been no Interruption) hold till he be ſatisfied. *R.* 4 *Co.* 82. *b.*

So, if he be interrupted by the Feoffee himſelf, he may hold over, or take his Remedy by Action againſt him: For he ſhall not have Advantage of his own Wrong. *R.* 4 *Co.* 82.

But where he is prevented by his own Negligence or Default, as by the Entry of a Stranger, by Enemies of the King, by Ignorance of the Condition, *&c.* he ſhall not take the Profits beyond the Time in which he might be ſatisfied. *R.* 4 *Co.* 82. *Sir And. Corbet.*

If Rent be granted with a Condition, that if it be in Arrear, the Grantee, his Heirs and Aſſigns may enter and hold the Land till ſatisfied by the Profits; the Aſſignee may enter and hold till Satisfaction. *R.* 1 *Sand.* 112.

And the Grant is good, tho' the Deed be not inrolled; for this uncertain Intereſt may attend a certain and fixt Eſtate. *R.* 1 *Sand.* 112. 1 *Sid.* 344.

So, if the Grant be by Deed with a Covenant to levy a Fine, which is levied of the Land accordingly; the Aſſignee of the Rent ſhall take Advantage of the Condition, which ſhall be transferred with the Rent, tho' it was only a Poſſibility. *R.* 2 *Rol.* 48. *l.* 45.

But if a Man purchaſes the Manor of *D.* and has other Land conveyed as a collateral Security, to the Uſe of the Vendor and his Heirs till the Purchaſer be evicted by his Wife, and then to the Uſe of the Purchaſer, his Heirs and Aſſigns, till ſatisfied the Damage had by ſuch Eviction; if he aſſigns the Manor of *D.* the Aſſignee, being evicted, cannot enter into the other Land: For the Uſe being contingent, was not aſſignable before it happened. *R.* 2 *Rol.* 49. *l.* 5.

(O 4.) What Intereſt he has.

He, who enters, has only the Pernancy of the Profits till ſatisfied, and no certain Intereſt; for the Freehold continues in the Feoffee, *&c.* *Co. L.* 203. *a.*

Tho' the Condition be, *that the Feoffor, his Heirs and Aſſigns enter, &c.* *R.* 1 *Sand.* 112. 1 *Sid.* 344. *Ray* 136, 158.

And if he enters his Intereſt goes to his Executors. *R.* 1 *Sid.* 223, 262. 344, 5. *D. Al.* 45.

But he who enters, may maintain an Ejectment; for he has an Intereſt to make a Leaſe for Trial of the Title. *R.* 1 *Sid.* 345. 1 *Saund.* 112.

(O. 5.) Where the Entry is general.

If a Condition upon a Feoffment, or other Eſtate of Freehold be, *that for Nonperformance the Feoffor, &c. ſhall enter*; if the Condition be broken, the Eſtate is not defeated, generally, till Entry, or Claim: And therefore, if he can, he ought to make an actual Entry. *Co. L.* 218. *a.*

And if the Eſtate lies in Grant, as an Advowſon, Rent, Reverſion, &c. he ought to make a lawful Claim. *Co. L.* 218. *a.*

So, tho' the Condition be, *that for Non-performance the Eſtate ſhall be abſolutely void*; for an Eſtate of Freehold cannot regularly ceaſe, without Entry, or Claim. *Co. L.* 218. *a.* 2 *Co.* 50. 2 *And.* 8.

So, tho' the Condition be upon a Bargain and Sale, which paſſes only an Uſe, which might ceaſe at the Common Law without a Claim; for now, by *St.* 27 *H.* 8. the Poſſeſſion is executed. *R.* 2 *Co.* 53. *b.*

Yet in Caſe of Neceſſity, there need not be an Entry or Claim: And therefore, if a Leaſe be for five Years, upon Condition, *that if the Leſſee within two Years pays* 20 *l. he ſhall have the Fee*, and Livery is made, by which the Leſſee has a Fee Conditional: if he does not pay, the Fee ſhall be reveſted without Entry, for he cannot enter during the Term. *Lit. S.* 350.

So, if a Rent be granted out of his Land, upon Condition; if the Condition be broken the Rent ſhall be extinct, without Claim, for he need not claim upon the Land which he has in his own Poſſeſſion. *Co. L.* 218. *a.*

So, if a Feoffment be upon Condition, and before the Time of Performance, the Feoffee leaſes for Years to the Feoffor; and then the Condition is broken; the Feoffor, being in Poſſeſſion, cannot enter. *Ibid.*

So, if a Covenant be to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder over with Power of Revocation: if he revokes, there needs no Entry, or Claim. *Co. L.* 218. *b.* *R.* 1 *Co.* 174.

By whom Entry may be made, *Vide Claim*, (B. 2.)

(O. 6.) He ſhall be in his firſt Eſtate.

He, who enters for a Condition broken, regularly ſhall have the Land in his firſt Eſtate. *Co. L.* 202, *a.* 1 *Rol.* 474. *l.* 17.

And therefore, if Tenant for Life makes a Feoffment, and enters for the Condition broken; he ſhall be ſeiſed for Life, the Reverſion as before. 1 *Rol.* 474. *l.* 27.

So, if he enfeoffs him in Reverſion, upon Condition. 1 *Rol.* 474. *l.* 30.

So, if a Man grants, or deviſes for Life, upon Condition, Remainder over; if it be a good Condition, the Entry for the Condition broken will deſtroy the Remainder. 1 *Rol.* 474. *l.* 40, 45. *Cont. Dy.* 127. *Acc.* 29 *Aſſ.* 17. *R. Acc.* 10 *Co.* 41. *b.* 1 *Rol.* 472. *l.* 40, 45.

And therefore, a Condition annexed to an Eſtate for Life, where a Remainder over is limited, ſhall be taken as a Limitation. *Vide Poſt*, (T.)

But otherwiſe will it be in a Caſe of Neceſſity: As, if a Man ſeiſed in Right of his Wife, makes a Feoffment upon Condition, and his Heir enters for the Condition broken, his Eſtate immediately ceaſes, and ſhall be veſted in the Wife. *Co. L.* 202. *a.*

If *Ceſtuy que Uſe* made a Feoffment before *St.* 27 *H.* 8. upon Condition; and entred for a Breach after the Stat. he would be ſeiſed of the Eſtate, whereas before he had only the Uſe. *Co. L.* 202. *a.*

If Tenant in ſpecial Tail enfeoffs upon Condition, and his Wife dies, and then he enters for a Breach; he ſhall be only Tenant in Tail after Poſſibility. *Co. L.* 202. *b.*

So he ſhall not have it in his firſt Eſtate as to collateral Qualities: As, if Tenant by *Homage Anceſtrel* makes a Feoffment upon Condition, and enters for a Breach; he ſhall not hold afterwards by *Homage Anceſtrel*, for the Preſcription was interrupted. *Ibid.*

So, if a Copyhold eſcheats, and the Lord makes a Feoffment of it upon Condition, and enters for the Breach. *Ibid.*

If Tenant for Life makes a Feoffment, and enters for the Condition broken, he ſhall be ſubject to a Forfeiture. *Ibid.*

So, if a Grantee of a Ward by the King grants to the Ward himſelf for 1200 *l.* to be paid at his full Age, his Wardſhip and Marriage for ever, upon Condition

dition, that if he dies within Age or before the 1200 *l.* paid, the Grant ſhall be void; if he dies within Age, the Wardſhip and Marriage are not reveſted. *R. Sav.* 79, 80.

Entry for a Condition broken defeats the Eſtate, to which the Condition was annexed, to all Intents: And therefore, if the Feoffee upon Condition dies, and then the Feoffor enters for the Condition broken, the Wife of the Feoffee ſhall not be endowed. 1 *Rol.* 474. *l.* 10.

(P) What ſhall be a Diſpenſation.

Vide Copybold, (M. 8.) *Vide Forfeiture,* (A. 11, 12.)

IF after a Condition broken annexed to an Eſtate of Freehold, and Notice of it, the Feoffos accepts the Rent due at a ſubſequent Day; it ſhall be a Diſpenſation of the Forfeiture, for he allows the Eſtate to have Continuance. *Co. L.* 211. *b. Per* 3 *J. Cro. El.* 553, 572.

So, if a Condition upon a Leaſe for Years be, *for Non-payment of Rent to re-enter*; the Acceptance of Rent at a ſubſequent Day, is a Diſpenſation. *Cro. El.* 553, 572.

So, if he diſtrains, or brings an Aſſiſe for Rent due at the ſame Day, or a ſubſequent Day. *Co. L.* 211. *b.* 1 *Rol.* 475. *l.* 25.

Or, for Rent incurred at a Day precedent; for he affirms the Eſtate to have Continuance. 1 *Rol.* 475. *l.* 30.

So, if a Condition be *that he ſhall not aſſign*; Acceptance of Rent from the Aſſignee will be a Diſpenſation. *R.* 2 *Cro.* 398.

If it be alledged, that he knew it, it is ſufficient; for if he had not Notice, it ſhall come of the other Part. *R.* 2 *Cro.* 398.

But if a Condition be *to do a collateral Thing*; Acceptance of Rent before Notice of Forfeiture, is not a Diſpenſation. *R.* 3 *Co.* 65. *Cro. El.* 528.

So, if a Condition be *to pay Money*; Acceptance of Rent due before, is not a Diſpenſation.

So, if he afterwards accepts the Rent, by the Non-payment of which the Condition was broken, and gives an Acquittance for it. *Co. L.* 211. *b.*

So, if by a Condition broken the Eſtate abſolutely ceaſes; Acceptance of Rent, due at the ſame, or a ſubſequent Day, does not affirm it: As, if a Leaſe for Years be upon Condition *for Non-payment to be void.* *R.* 1 *Rol.* 475. *l.* 35.

Tho' a Leaſe be by the King, and he afterwards accepts the Rent in the *Exchequer* upon Record. *R.* 1 *Rol.* 475. *l.* 40. *Cro. El.* 221. 2 *Leo.* 134. 1 *And.* 303. *Adm. Mo.* 294. *Poph.* 25, 53.

So, if a Condition be, *that he do not aſſign without Licence*, and after Notice of ſuch Aſſignment, the Leſſor accepts the Rent from the Aſſignee. *R.* 1 *Rol.* 476. *l.* 5. *Cro. Car.* 512.

If a Licence be to alien; the Death of him who gave it, before Alienation, is not a Countermand. *Co. L.* 52. *b.*

(Q.) What Act deſtroys a Condition.

IF after a Leaſe upon Condition, the Leſſor grants the Reverſion of Part of the Land, this deſtroys the Condition. *Vide Ante,* (O. 2.)

So, if the Leſſor releaſes the Condition.

So, if a Feoffee upon Condition makes a Leaſe for Life, Remainder to *B.* and the Feoffor releaſes the Condition to the Leſſee only; the whole Condition is gone. *Co. L.* 297. *b.*

So, if a Condition be to do ſuch an Act, and the Leſſor diſcharges him of Part; the whole Condition is deſtroyed: As, if a Condition be *to plow his Land,* or, *build his Houſe,* and he diſcharges him of Part. 1 *Rol.* 471. *l.* 47, 52.

So, if a Condition *be to go with* B. *and* C. and he diſcharges him as to *B.* 1 *Rol.* 471. *l.* 50.

If a Condition be, *that he do not demiſe any Part without Licence*; if he licenſes as to any Part, he may demiſe all the Reſidue, without Licence. 1 *Rol.* 471. *l.* 42. 2 *Cro.* 102. *R.* 4 *Co.* 120. *Cro. El.* 816.

Or,

Or, *that he and his Aſſigns do not demiſe*; if he aſſigns by Licence, the Aſſignee may afterwards demiſe, without Licence. *R.* 1 *Rol.* 471. *l.* 35. 4 *Co.* 120. *a.* *Cro. El.* 816.

Or, *that none of the Leſſees demiſe without Licence*, and he gives Licence to one; the other Leſſees may demiſe without Licence. 1 *Rol.* 472. *l.* 7. 4 *Co.* 120.

So, if a Leſſor gives Licence; the Leſſee may uſe it after a Grant of the Reverſion. *R.* 2 *Cro.* 102.

Or, the Death of the Leſſor. *Co. L.* 52. *b.*

So, if a Condition be, *that he ſhall aſſign only to his Wife or Brother*; if he aſſigns to the Brother, He may afterwards aſſign to another. *R.* 2 *Cro.* 398. *Per* 2 *J.* 3. *Cont. Dy.* 152. *But the Opinion of the two Judges allowed.* 4 *Co.* 120. *b.*

If a Leaſe be upon Condition to Huſband and Wife, *that if it comes to any other Hand than their own, and their Iſſues, the Leſſor ſhall re-enter*; if the Huſband dies, and the Wife takes another Huſband, the Leſſor ſhall re-enter. *Dub. Mo.* 21.

If a Man leaſes for Years upon Condition, and afterwards leaſes by Indenture for the ſame Term to another, to commence immediately; this does not deſtroy the Condition, for the ſecond Leaſe is good only by Eſtoppel. 1 *Rol.* 472. *l.* 50.

(R) Condition in Law; What is.

A Condition in Law is that, which the Law implies without any expreſs Words of the Party. *Co. L.* 232. *b.*

As, to the Eſtate of Tenant by the Curteſy, in Dower, after Poſſibility, for Life, for Years, by Statute-Merchant, Staple, *Elegit*, Guardian, *&c.* a Condition is annexed by the Law, that they do not alien in Fee, *&c.* *Co. L.* 233. *b.*

To every Eſtate, that it be not aliened in *Mortmain*. *Ibid.*

So, to the Eſtate of Tenant by the Curteſy, in Dower, for Life, Years, *&c.* a Condition is annexed, that they do not commit Waſte. *Ibid.*

So, to a Grant of an Office of a Parker, Steward, Bedel, Bailiff of a Manor, and other Offices, a Condition is annexed by Law, that he do that which to his Office appertains. *Lit. S.* 378, 379.

So, by the *St.* 5 *Ed.* 6. 16. to Offices which concern the Adminiſtration, or Execution of Juſtice, a Condition is annexed, that he do not purchaſe, or ſell his Office. *Co. L.* 234. *a.* *Vide Officer*, (K. 1.)

So, to all Franchiſes a Condition is annexed by Law, that they be not miſuſed. *Mir. ch.* 5. *S.* 4. 2 *Inſt.* 223. *D. Quo. War.* 11, 12.

Who are bound by a Condition in Law. *Vide Ante*, (A. 10.)

(S) What ſhall be a Breach of a Condition in Law.

(S. 1.) Dereliction of an Office.

WHEN an Alienation by Tenant by the Curteſy, in Dower, for Life, Years, *&c.* ſhall be a Forfeiture, *Vide Forfeiture*, (A. 1, &c.)

When an Alienation in *Mortmain*, *Vide Capacity*, (B. 2, &c.)

When Waſte ſhall be a Forfeiture, *Vide Waſte*, (F. 1, 2.)

In all Caſes where an Officer relinquiſhes his Office, and refuſes Attendance, he forfeits his Office. *Co. L.* 233. *b.* *R.* 9 *Co.* 50. *b.* *Vide Officer*, (K. 2.)

So, if an Officer has a Sentence againſt him in the Star-chamber for Bribery, and that he be incapable of any judicial Office; his Office is not loſt by the Sentence, for if he be pardoned, he may afterwards execute it. But if, after Sentence, and before the Pardon, he refuſes Attendance; it is a Forfeiture. *R. Cro. Car.* 55.

(S. 2.) Abuſing his Authority.

So, in all Caſes where an Officer acts contrary to the Duty of his Office; it ſhall be a Forfeiture: As, if a Parker kills Deer, &c. without Warrant. *Co. L.* 233. *b.* *R.* 1 *And.* 29.

Or, deſtroys the *Vert*; as by cutting down, or ſelling of Trees, Wood, Underwood, &c. *Co. L.* 233. *b.* 1 *And.* 29. *R. Mo.* 707. 787, 9.

Or, pulls down the Lodge, or other Houſes of the Park. *Co. L.* 233. *b.* 1 *And.* 29.

Or, ſurcharges the Park by Agiſtment, that the Deer have not ſufficient Herbage. *R. Mo.* 787.

So, if a Parker refuſes to execute the Warrant of his Maſter, or to permit it to be executed. *Per* 2 *J.* 1 *Cont. Mo.* 9.

If by Stat. an Auditor be bound to ſhew his Account before *Hilary* Term annually, and does not do it; it ſhall be a Forfeiture. *Dy.* 197. *b.*

So, if an Officer neglects that which by his Patent he ought to do *Sub pœna Forisfacturæ*; As, if he does not account, or pay Money due upon an Account, at the Time appointed by his Patent. *R. Dy.* 211. *a.*

If he, who has an Office of the Cuſtody of a Houſe of the King, denies him who has the Inheritance to inhabit there; it ſhall be a Forfeiture. *R.* 2 *Cro.* 18. *Mo.* 787.

Otherwiſe, if his Servants do it of their own Head. *R.* 2 *Cro.* 18. *Mo.* 787.

So, in all Publick Offices, which concern the Adminiſtration of Juſtice, *Non-uſer*, of itſelf, is a Forfeiture. *Co. L.* 233. *a.* *Vide Liberties*, (C. 1, 2.)

As, Abſence in a Philizer for two Years. *Dy.* 114. *b.*

In a Town Clerk. 1 *Sid.* 14. *Vide Franchiſes*, (F. 27.)

But Abſence involuntary, or for a reaſonable Cauſe, is not a Forfeiture; As, if a Serjeant of Arms makes a Deputy by the King's Licence by *Parol* only. *R.* 9 *Co.* 99.

So, in private Offices, *Non-uſer*, if it be accompanied with any Damage to the Lord or Maſter, is a Forfeiture: As, if a Parker be abſent for two or three Days, and in his Abſence Deer, &c. are killed. *Co. L.* 233. *a.*

So a voluntary Neglect to attend, without a reaſonable Excuſe of the Abſence, is a Forfeiture of the Office of Serjeant at Arms to the Lord Chancellor. *R.* 9 *Co.* 99. *Dy.* 198. *a.*

So Non-attendance in his Month of Waiting, is a Forfeiture of the Office of Clerk of the Signet. *D.* 1 *Sid.* 81.

And, if the Office was granted in Reverſion, Non-attendance when the Office is void, without Notice of the Death of the former Officer. *D.* 1 *Sid.* 81.

So a private Officer, who has only a certain Fee to be paid by his Maſter, may be diſcharged *ad Libitum*. *Co. L.* 233. *a.*

But, generally, *Non-uſer* of a private Office, without a ſpecial Damage, is not a Forfeiture. *Ibid.*

So a private Officer cannot be diſcharged *ad Libitum*, where he has Profits belonging to his Office, beſides his Fee; for a Grantor cannot defeat his own Grant: As, a Steward of a Manor, &c. *Co. L.* 233. *b.*

So he cannot be diſcharged *ad Libitum*, where his Fee is not paid by the Lord, but to be allowed out of the Profits of his Office. *Ibid.*

What Charges, &c. ſhall be avoided by an Entry for a Forfeiture, *Vide Ante*, (O. 6.)

(T) Limitation; What ſhall be.

SO, if an Eſtate be granted under a Limitation, there is a Condition in Law, that if the Contingency upon which the Eſtate is limited happens, the Eſtate determines.

As, if an Eſtate be granted to a Woman *durante Viduitate*. *Co. L.* 234. *b. Jon.* 58.

Or, *dum caſta & ſola vixerit*. *Co. L.* 234. *b.*

So, *dummodo, quamdiu, donec, quouſque*, &c. are Words of Limitation. *Co. L.* 235. *a.* 10 *Co.* 42. *a.*

So, where an Eſtate is limited by Way of Uſe, it ſhall be a conditional Limitation; tho' it would not be a Condition by the Common Law. *Pol.* 78.

If a Man, by his Will, deviſes Land to his Heir, upon Condition, that he pays, or does ſuch an Act, &c. and for Non-payment, &c. deviſes it over; this ſhall be taken as a Limitation, tho' there are expreſs Words of Condition; for otherwiſe, the Heir, who ought to enter for the Condition broken, will take Advantage of his own Default. *R.* 1 *Rol.* 411. *l.* 30, 45. *R. Ray.* 237. *R.* 2 *Mod.* 7.

So, if an Eſtate be deviſed for Life, or Years, upon Condition, Remainder over in Fee; the Words of Condition ſhall be taken as a Limitation; for otherwiſe, by Entry for the Condition broken the Remainder will be deſtroyed. *Cont.* 10 *Co.* 40. *b. Per Periam, acc.* 1 *Leo.* 283. *R.* 2 *Leo.* 38. *Ow.* 8, 55. *R. Cro. El.* 919, 833. *R.* 2 *Cro.* 592. *R.* 1 *Vent.* 203. 1 *Mod.* 86.

[If *A.* on the Marriage of his eldeſt Son *B.* ſettles a Freehold Leaſe held for the Life of *B.* and others, in Truſt to permit *B.* to enjoy for Life, then his intended Wife for Life, then, after being ſubject to a Charge for younger Children, in Truſt for the Heirs-males of the Body of *B.* and in Default for the Heirs-males of the Body of *A.* and in Default for the right Heirs of *A.*; this Limitation to the Heirs-males of the Body of *A.* is not a contingent Remainder, but a Limitation of the Eſtate; and *B.* thus being in the Nature of Tenant in Tail, and alſo Tenant for Life, may, on the Death of his Wife and Son, bar the Intail. *Forſter* v. *Forſter*, *H.* 1741. 2 *Atkyns* 259.]

[If *A.* deviſes his real Eſtate to his Heir at Law *B.* and his Heirs, on expreſs Condition that in three Months after *A.*'s Death he execute to his Truſtee a Releaſe, if not, to *C.* and *B.* dies in *A.*'s Life-time, the Eſtate goes to *C.* and not to the Heir at Law; for this is not a ſtrict Condition but a conditional Limitation. *Avelyn* v. *Ward*, *H.* 1749. 1 *Vezey* 420.]

So a Deviſe of a Houſe to *A. provided that if he does not inhabit there, it ſhall be to the Lord*, will be a Limitation. *Dal.* 117.

So expreſs Words of Condition ſhall be taken for a Limitation, if the Nature of the Caſe requires it. *Eq. Abr.* 105.

Yet, if a Remainder is not limited upon the Non-performance of the Thing to be done by the Condition, it ſhall be taken as a Condition, and not as a Limitation. *Semb.* 1 *Rol.* 411. *l.* 15. 412. *l.* 7.

So, if an Eſtate be *to* A. *paying, &c. and if he do not pay, to* B. *and if he do not perform, to the Mayor, &c.* The ſecond Limitation will be void; for it will be a Poſſibility after a Poſſibility. *Semb. Cro. Car.* 577.

So, if a Freehold, or Inheritance be deviſed with Remainder over, upon Condition, *that if he do not go to* Rome, &c. *his Eſtate ſhall ceaſe, and ſhall go to him in Remainder*; it cannot be taken as a Limitation, for a Freehold cannot ceaſe. *Jon.* 58.

[If a Man deviſes Land, and Money to be laid out in Land, to Truſtees, on Truſt and to the Uſe of *A.* in ſtrict Settlement, with Remainders over in ſtrict Settlement; Proviſo, "That when the Perſon who for the Time being would "(if Teſtator had not otherwiſe directed) have been intitled in Poſſeſſion as Te-"nant for Life or in Tail, ſhall be under twenty-ſix, the Truſtees ſhall enter "and receive the Rents and Intereſt, and allow certain Maintenances to ſuch "Tenant for Life, or in Tail, the Reſt to accumulate, and be laid out in Lands "to the ſame Uſes;" and *A.* attains twenty-ſix, marries, dies leaving his Wife *enceinte* of *B.* the Truſtees take no Eſtate in the Premiſſes on the Birth of *B. Lade* v. *Holford*, *T.* 3 *G.* 3. 3 *B. M.* 1416.]

Condition in Terrorem.

Vide Chancery, (2 Q. 6.—3 Z. 6, 7.)

Vide more of Condition, in *Chancery*, (2 Q. 1, &c.—4 D. 1, &c.—*Eſtates*, (A. 6, &c.)—*Obligation*, (E.)—*Uſes*, (K. 4.)

CONDUCT.

Vide Admiralty, (E. 8.)—*Prærogative*, (B. 5.)

CONFERENCE.

Vide Parliament, (G. 24, 29.)

CONFESSION.

Vide Indictment, (K.)—*Pleader*, (G. 3.—Q. 5.—Y. 2.—2 W. 15.

CONFIDENCE.

Vide Chancery, (4 W. 1, &c.)

CONFIRMATION.

(A) Confirmation in Fact; By what Words it ſhall be.

COnfirmation is when a Man confirms a defeaſible Eſtate, or enlarges a particular Eſtate. *Co. L.* 295. *b.*

And it is expreſſed, or implied. *Ibid.*

By a Confirmation expreſs, or in Fact, a voidable Eſtate ſhall be confirmed; ſo that it cannot be avoided; as, if a Diſſeiſee confirms the Eſtate of the Diſſeiſor. *Vide Lit. S.* 519.

And there needs not the Word, *confirmavi*; for if a Man uſes the Word *Dedi*, or *Conceſſi*, that amounts to a Confirmation. *Lit. S.* 531.

So, *demiſi*. *Co. L.* 301. *b.*

So, if a Man ſays, *Volo quod* A. *habeat* ſuch Land; that amounts to a Confirmation. *Ibid.*

And a Confirmation ſhall be good by ſealing the Deed, without Livery, or other Circumſtance. *Semb. Sav.* 49.

So, if Patron and Ordinary give Licence to a Parſon to make a Grant; that amounts to a Confirmation. *Co. L.* 300. *b.*

So, if Parſon and Ordinary demiſe for Years to the Patron, who grants it over to *B.* This Aſſignment amounts to a Grant and Confirmation alſo. *Co. L.* 302. *a.* 2 *Rol.* 9.

So, if a Diſſeiſor grants a Rent out of the Land to the Diſſeiſee, who aſſigns it, and afterwards re-enters; that amounts to a Grant and Confirmation of the Rent by the Diſſeiſee. *Co. L.* 302. *a.*

So, if a Diſſeiſor grants the Land to *B.* for Life, or in Tail, Remainder to the Diſſeiſee, who grants over this Remainder, to which the Tenant for Life attorns;

attorns; that amounts to a Confirmation by the Diſſeiſee of the Remainder, and alſo of the particular Eſtate. *Ibid.*

So, if the Diſſeiſee joins in a Feoffment, *&c.* with the Heir of the Diſſeiſor; that amounts to a Confirmation by the Diſſeiſee. *Lit. S.* 534.

So, if a Donee in Tail grants a Rent in Fee to him in Remainder, who aſſigns it over; that amounts to a Confirmation of the Rent, if the Donee dies without Iſſue. *Semb.* 1 *Rol.* 482. *l.* 45.

So, if a Donee makes a Leaſe not warranted by *St.* 32 *H.* 8. and dies, and the Iſſue accepts the Rent; that amounts to a Confirmation. *Vide Eſtates*, (B. 24, 32.)

So, in every Caſe, where a Leaſe is only voidable; as, by an Abbot, Biſhop, *&c.* 3 *Co.* 65. *a.*

But a Surrender does not amount to a Confirmation. *Co. L.* 301. *b.*

So, if a Man bargains and ſells the Reverſion to Leſſee for Years; that does not amount to a Confirmation to enlarge his Eſtate, if the Bargain and Sale be not inrolled. *Dal.* 37.

So, if there be Leſſee for Years, Remainder to *A.* for Life, the Reverſion to *B.* in Fee; a Charter of Feoffment and Livery, by *B.* to the Leſſee, being void as a Feoffment, does not amount to a Confirmation to enlarge the Eſtate of the Leſſee. *R.* 1 *Rol.* 482. *l.* 40.

So, if a Leaſe be abſolutely void, Acceptance of Rent afterwards does not amount to a Confirmation: As, if a Leaſe be, upon Condition for Non-payment to be void. *Vide Condition*, (P.)

So, if a Parſon, Vicar, or Prebendary leaſes for Years, and dies, and the Succeſſor accepts the Rent; it is not a Confirmation, for the Leaſe was void by his Death. 3 *Co.* 65. *a.* *Vide Poſt*, (D. 1.)

If a Biſhop makes a Leaſe, which needs Confirmation by the Dean and Chapter, and dies before Confirmation, and the Rent be accepted by the Succeſſor; the Leaſe ſhall not be affirmed. 2 *Ro.* 161.

What Act by a Woman, or one at full Age ſhall be a Confirmation of an Eſtate made during Coverture or Nonage, *Vide Baron and Feme*, (S. 1.)—*Enfant*, (C. 6.)

(B) How a Confirmation ſhall enure.

(B. 1.) When confirming the Eſtate enures to the whole Eſtate.

IF a Diſſeiſee confirms the Eſtate of the Diſſeiſor, it is good for ever. *Lit. S.* 519.

Tho' the Confirmation was only for Life, or for Years, or for a Day, *&c.* for he confirms his Eſtate, which was a Fee-ſimple. *Lit. S.* 519, 520.

So, if a Diſſeiſor makes a Gift in Tail, and the Diſſeiſor confirms the Eſtate of the Donee only for Life, *&c.* this enures to confirm the whole Eſtate-Tail. *Co. L.* 296. *b.*

So, if an Eſtate of Freehold be confirmed in Part, or for a Time, the whole Eſtate is confirmed, for it is entire. *Co. L.* 297. *a.*

So, if an Eſtate be for Years. and he confirms the Demiſe, or Leaſe, or Eſtate of the Leſſee, for Part of the Term; the Addition of *Part of the Term* is void, for the Demiſe or Eſtate was confirmed before. *Ibid.*

So, if a Dean and Chapter, *&c.* confirm a Leaſe only for Part of the Term. *R.* 1 *And.* 47.

So, if a Diſſeiſor makes a Joint-Eſtate to *A.* and *B.* and the Diſſeiſee confirms the Eſtate of *B.* this enures to *A.* for the Eſtate is confirmed, which was joint. *Lit. S.* 522. *Co. L.* 297. *b.*

So, if the Eſtate of one Joint-tenant be confirmed, that enures to his Companion. *Lit. S.* 522.

Or, if one Joint-tenant confirms the Eſtate of the other, it remains joint. *Lit. S.* 523.

If a Diſſeiſor makes a Leaſe to *A.* and *B.* and to the Heirs of *B.* and the Diſſeiſee confirms the Eſtate of *B.* for Life; this enures to *A.* and alſo to the Fee of *B.* for he had the whole Eſtate of the Fee-ſimple in him. *Co. L.* 297. *b.*

So, if a Diſſeiſor makes a Leaſe for Life, *&c.* Remainder to *B.* in Fee, and the Diſſeiſee confirms the Remainder; this enures to the Benefit of the particular Eſtate; for, if this ſhould be defeated, the Remainder would be alſo defeated. *Lit. S.* 521.

So, if he makes a Leaſe for Life, reſerving the Reverſion to himſelf; a Confirmation of the Reverſion enures to the Leſſee for Life, for, by Entry upon him, the Reverſion would be deſtroyed. *Co. L.* 298. *a.*

(B. 2.) When it enures only to Part.

But ſometimes by apt Words a Confirmation goes only to Part of an Eſtate: As, if a Diſſeiſor, or Leſſee for Life, *&c.* makes a Leaſe for 100 Years; if the Diſſeiſee or Leſſor (does not confirm his Eſtate or Leaſe, but) confirms the Land to the Leſſee for fifty Years, it is good for ſo many Years. *Co. L.* 297. *a.*

So, if a Leaſe be of forty Acres, he may confirm it for twenty Acres. *Ibid.*

So, if a Diſſeiſor makes a Joint-Eſtate to two, and the Diſſeiſee confirms only the Land to one; he has the ſole Eſtate in the Whole. *Lit. S.* 522.

So, if a Diſſeiſor makes a Leaſe for Life, *&c.* Remainder to another; a Confirmation of the Eſtate of the Leſſee does not enure to him in Remainder. *Lit. S.* 521.

Or, if the Remainder be to the ſame Perſon: As, if a Diſſeiſor gives to *B.* in Tail, Remainder to the Heirs of *B.* a Confirmation of the Eſtate-Tail by the Diſſeiſee does not enure to the Remainder. *Co. L.* 297. *a.*

(B. 3.) When it enlarges the Eſtate.

If a Leſſor confirms the Eſtate of Leſſee for Years, *habend'* the ſaid Land to him for Life; this gives to him an Eſtate for Life. *Lit. S.* 532.

So, if he confirms it, *habend'* the Land to him and the Heirs of his Body, or his Heirs, generally; he has an Eſtate-Tail, or in Fee. *Lit. S.* 533. *Co. L.* 299. *a.*

So, if a Man ſeiſed of a Rent in Fee, grants it for Life, and afterwards confirms the Eſtate of the Grantee, *habend'* the Rent to him and his Heirs; the Grantee has a Fee. *Lit. S.* 549.

But if a Man confirms the Eſtate of a Leſſee for Life, *&c. habend'* his Eſtate to him and his Heirs; this does not enlarge the Eſtate, for the Eſtate for Life cannot go to his Heirs. *Co. L.* 299. *a.*

So, if a Rent be granted *de novo* for Life, and the Grantor confirms the Eſtate of the Grantee to him and his Heirs; this does not enlarge his Eſtate. *Lit. S.* 548.

And where a Confirmation enlarges the Eſtate, there ought to be Privity between him who confirms, and him who takes the Confirmation. *Co. L.* 296. *a.*

And therefore, a Confirmation by a Leſſor to a Leſſee for Life and a Stranger, is void to the Stranger. 1 *Rol.* 482. *l.* 27.

So a Confirmation to enlarge an Eſtate, by him who has only a Right to the Reverſion, is not good. 1 *Rol.* 482. *l.* 20.

But if a Woman, Leſſee for Life, takes Huſband; the Leſſor, by Confirmation to the Huſband, may enlarge his Eſtate; for there is a ſufficient Privity. *Co. L.* 299. *a.*

(B. 4.) How a Confirmation, which enlarges an Eſtate, operates.

If a Huſband has an Eſtate for Life in Right of his Wife, a Confirmation to the Huſband and his Heirs gives him the Fee, after the Death of his Wife. *Co. L.* 299. *a.*

If

If the Confirmation be to Husband and Wife for their Lives; this gives to the Husband a Remainder, or Interest for his Life, after the Death of his Wife. *Lit. S.* 525.

If it be to Husband and Wife, and their Heirs; they have a joint Fee-simple. *Co. L.* 299. *b.*

If an Estate was granted to Husband and Wife, *habend'* one Moiety to the Husband, and the other Moiety to the Wife, and a Confirmation be to the Husband and Wife and their Heirs; the Husband has one Moiety in Fee, and the Husband and Wife are Joint-tenants of the Fee in the other Moiety. *Ibid.*

If a Woman, Lessee for Years, takes Husband, and a Confirmation be to them for their Lives; they are Joint-tenants for Life, for the Term is merged in the Freehold. *Lit. S.* 526.

So, usually the Confirmation enures according to the Quality of the Estate: And therefore, if there are Tenants in Common for Life, and a Confirmation be to them and their Heirs; they have the Fee in Common. *Co. L.* 299. *b.*

If a Lease be to *A.* for Life, Remainder to *B.* for Life; a Confirmation to them and their Heirs, gives a Moiety to *A.* for Life, Remainder to *B.* for Life, Remainder to *A.* in Fee; and the other Moiety to *A.* for Life, Remainder to *B.* in Fee. *Ibid.*

If a Gift in Tail be to *A.* and *B.* a Confirmation to them and their Heirs, gives the Fee to them in Common; for it follows the Inheritance in them before, which they had in Common. *Ibid.*

(C) When a Confirmation is effectual.

(C. 1.) Tho' it wants Privity.

A Confirmation, which does not enlarge the Estate, shall be good, though there be no Privity: As, if Lessee for Life demises for Years, and the Lessor confirms the Estate of the Lessee for Years. *Lit. S.* 516, 517.

Or, a Disseisee confirms a Lease by the Disseisor. *Lit. S.* 518.

If an Infant leases for Years to *B.* who grants the Land for Part of the Years to another, and the Lessor at his full Age confirms it. *Lit. S.* 547.

Otherwise, where a Confirmation enlarges the Estate. *Vide Ante,* (B. 3.)

Or abridges the Services. *Vide Post,* (D. 3.)

(C. 2.) Tho' the Estate is gone, out of which the Grant confirmed was derived.

So, if a Disseisor grants a Rent-charge, *&c.* and the Disseisee confirms it, and afterwards enters upon the Disseisor; the Rent remains, tho' the Estate out of which it issued be gone. *Lit. S.* 527. *Co. L.* 300. *a.*

So, if the Heir of the Disseisor grants a Rent, and the Disseisee confirms it, and afterwards recovers the Land; tho' the Entry of the Disseisee was not congeable at the Time of the Confirmation. *Co. L.* 300. *a.*

So, if Feoffee upon Condition grants a Rent, which the Feoffor confirms, and afterwards enters for the Condition broken. *Ibid.*

So, if Lessee for Life grants a Rent in Fee, and the Lessor confirms it; the Rent remains, tho' the Estate for Life be determined. *Lit. S.* 529. 1 *Rol.* 483. *l.* 25, 30.

So, if Lessee for Life upon Condition, grants it, and afterwards the Condition is broken. *Co. L.* 301. *a.*

But if the Person who confirmed had only a particular Estate, his Confirmation determines with his Estate: As, if a Patron, being only Tenant for the Life of *B.* confirms a Lease of the Parson, the Confirmation is gone when *B.* dies. 2 *Rol.* 9.

(D) When

(D) When a Confirmation is not good.

(D. 1.) If it be of a void Thing.

BUT a Confirmation of a void Thing avails Nothing: As, if *B.* takes from another his Villein in Groſs, who confirms to *B.* his Eſtate in his Villein; it is of no avail, for he had not any Eſtate in him. *Lit. S.* 541.

If a Biſhop in *Ireland de facto*, where there is another rightful Biſhop alive, leaſes for Years, and the Leaſe is confirmed by the Dean and Chapter; yet the Leaſe is not good after the Death of the Leſſor. *R.* 2 *Cro.* 553, 4.

So, if a Diſſeiſee, before *Mich.* confirms the Eſtate of a Leſſee by a Leaſe by the Diſſeiſor, made to commence after *Mich.* for the Leſſee then had only *Intereſſe Termini*. *Co. L.* 296. *b.*

If a Biſhop collates to a Prebend, and dies, and before Induction the King confirms it; it is void, for he had nothing in the Prebend till Induction. 1 *Rol.* 483. *l.* 15. *Vide Poſt*, (D. 5.)

So a Confirmation of a void Leaſe does not make it good. *Dy.* 239. *b. Vide Baron and Feme*, (S. 1.)—*Enfant*, (C. 7.)—*Ante*, (A.)

Yet, by a Confirmation by Act of Parliament, a Thing void ſhall be made effectual: As, a void Patent. 1 *Rol.* 483. *l.* 5. *Semb. Cont.* where a void Cuſtom was confirmed. *Hard.* 41. where the Parliament confirms only a void Act. *Pl. Com.* 399.

Otherwiſe, if the Parliament confirms the Thing done; as, a Grant, Leaſe, Attainder, *&c.* which would be void without ſuch Confirmation. *Pl. Com.* 399.

(D. 2.) Does not give collateral Qualities.

So a Confirmation gives nothing but the Right to that, which he to whom the Confirmation is made, had before: As, if the Lord confirms the Eſtate of his Tenant, yet his Seigniory remains. *Lit. S.* 535.

So, if he who has a Rent, Common, *&c.* out of Land, confirms the Eſtate of the Terre-tenant; his Rent, Common, *&c.* remains. *Lit. S.* 536, 537.

So a Confirmation does not give any collateral Qualities: And therefore, if an Huſband alone levies a Fine, where Huſband and Wife are ſeiſed in ſpecial Tail, Remainder to the Huſband in Fee, and the Conuſee confirms the Eſtate of the Wife; this does not make her Eſtate deſcendible to the Iſſues, who are barred by the Fine. *R.* 9 *Co.* 142.

(D. 3.) Nor extinguiſhes a Right, *&c.* in Suſpence.

So a Confirmation does not give, nor extinguiſh a Right or Intereſt in the Confirmer, which was ſuſpended: As, if the Diſſeiſſee and a Stranger diſſeiſe the Heir of the Diſſeiſor, and the Diſſeiſee confirms the Eſtate of his Companion; this does not extinguiſh his Right, which was ſuſpended. *Co. L.* 298. *b.*

So, if he who has a Rent, *&c.* out of Land, and a Stranger, diſſeiſe the Terre-tenant, and the Grantee of the Rent confirms the Eſtate of the Stranger, and afterwards the Diſſeiſee re-enters; the Rent is revived, for it was ſuſpended at the Time of the Confirmation. *Ibid.*

So by a Confirmation a Man cannot make a Reſervation to himſelf: As, if a Lord confirms the Eſtate of his Tenants, he cannot reſerve new Services. *Lit. S.* 539.

If Queen *Elizabeth* grants a College two Manors rendring Rent, and her Succeſſor confirms the Grant rendring the ſame Rent; it ſhall not be a double Rent, for a Rent upon a Confirmation is void, tho' it be in the Caſe of the King. *R. Hard.* 167.

But by Confirmation a Man may abridge his former Services: As, if the Tenant holds by Fealty and 20*s.* Rent; the Lord may confirm his Eſtate, to hold only by 12*d.* Rent. *Lit. S.* 538.

Or, to hold by *Frankalmoigne*; for this is a Diſcharge of the other Services, rather than a Reſervation of a new Service. *Lit. S.* 540.

Yet, to ſuch a Confirmation as abridges Services, Privity is neceſſary. *Co. L.* 305. *b.*

And therefore, if there be Lord, Meſne, and Tenant, the Lord cannot abridge the Services of the Tenant. *Ibid.*

So, if a Man has a Rent-charge, or Common, in the Land of another, by Confirmation to the Terre-tenant, his Rent, or Common ſhall not be diminiſhed, or abridged. *Co. L.* 305. *a.*

(D. 4.) So a Confirmation is not good, when made by him who has Nothing.

So a Confirmation by him, who has nothing at the Time, is worth nothing. 1 *Rol.* 482. *l.* 8.

As, if Tenant in Tail and the Iſſue in Tail join in a Grant of the next Avoidance, and the Tenant in Tail dies; this is not a Confirmation by the Iſſue in Tail, for he had nothing at the Time. *R.* 1 *Rol.* 482. *l.* 10.

(D. 5.) So it ſhall not have Relation to the Prejudice of another.

So a Confirmation ſhall not have Relation to the Prejudice of another: As, if a Parſon makes a Leaſe, and afterwards the Patron being Biſhop grants the next Avoidance to *A.* and it is confirmed by the Dean and Chapter, and afterwards the Leaſe is by them confirmed; the Preſentee of *A.* ſhall avoid the Leaſe, for the Grant to *A.* was before the Confirmation of the Leaſe. *R. Hob.* 7.

So the ſubſequent Preſentee ſhall avoid it; for being avoided by the Preſentee of *A.* it ſhall be void as to all his Succeſſors. *Hob.* 7.

Vide Chancery, (2 R.)

CONIES.

Vide Juſtices of Peace, (B. 48.)

CONSCIENCE.

Vide Chancery.

CONSIDERATION.

To raiſe an Aſſumpſit.

Vide Action upon the Caſe upon Aſſumpſit, (B. 1, &c.)

To raiſe an Uſe by Bargain and Sale.

Vide Bargain and Sale, (B. 11.)

——— by Covenant to ſtand ſeiſed.

Vide Covenant, (C. 3, &c.)

Vide alſo *Agreement*, (B. 2, 3.)—*Chancery*, (2 C. 7, 8, &c.—2 T. 10.—4 D. 4, 5, 7.)—*Pleader*, (C. 52, &c.—*Uſes*, (K. 1.)

CONSIMILI CASU.

Vide Dum fuit infra Ætatem, (E.)

CONSISTORY COURT.

Vide Courts, (N. 6.)

CONSPIRACY.

Vide Action upon the Case for a Conspiracy.—Justices of Peace, (B. 107.) *—Pleader*, (2 K.)

CONSTABLE.

Constable.

Vide Justices of Peace, (B. 79.—D. 7.)—*Leet*, (M. 5, &c.)

High Constable.

Vide Officer, (E. 2.)

CONSULTATION.

Vide Prohibition, (K. 1, &c.)

CONTEMPT.

Vide Attorney, (B. 13.)—*Chancery*, (D. 3, &c.

CONTINGENCY.

Vide Devise, (N. 29.)—*Estates*, (B. 16.)—*Uses*, (K. 6.)

CONTINUAL CLAIM.

Vide Claim, (A. 1, &c.)

CONTINUANCE.

Continuance of Estate.

Vide Pleader, (C. 66, &c.)

Continuance of parliament.

Vide Parliament, (M.)

Continuance of Act of parliament.

Vide Parliament, (R. 2.)

Continuance and Diſcontinuance of Suit, or Proceſs.

Vide Courts, (P. 11.)—*Pleader*, (V. 1, &c.—W. 1, &c.)

Puis darrien Continuance.

Vide Abatement, (I. 24.)

CONTINUANDO.

Vide Pleader, (3 M. 10.)

CONTRACT.

Vide Abatement, E. 12.—F. 8.)—*Admiralty*, (E. 10, 11.)—*Agreement.*——*Bargain and Sale.*——*Baron and Feme*, (Q.)—*Dett*, (A. 8, 9.)—*Enfant*, (B. 5.)—*Ideot*, (D. 1, &c.)—*Merchant*, (E. 1, &c.)—*Pleader*, (2 W. 11, 43, &c.)—*Trade*, (D. 3.)—*War*, (B. 2.)

CONTRA FORMAM STATUTI.

Vide Pleader, (2 S. 10.)

CONTRA PACEM.

Vide Action upon the Caſe, (C. 4.)—*Pleader*, (3 M. 8.)—*Prohibition*, (F. 7.)

CONTRIBUTION.

Vide Chancery, (2 I.—2 S.)

CONVENT.

Vide Eccleſiaſtical Perſons, (B. 4, 5.)

CONVENTICLE.

Vide Juſtices of Peace, (B. 16.)

CONVERSION.

Vide Action upon the Caſe upon Trover, (E.—G. 5.)

CONVEYANCE.

Vide Chancery, (2 T. 1, &c.)—3 M. 2, &c.—4 S. 2.)—*Diſcontinuance*, (C. 3, 4, 5.)—*Garranty*, (D.)—*Pleader*, (C. 37.)—*Poiar*, (C. 5.)

CONVICTION.

Vide Appeal, (G. 9, 16.)—*Juſtices of Peace*, (C. 1, &c.)

CONVOCATION.

(A) How aſſembled.

THE Convocation ought to be ſummoned only by the King's Writ.

By the *St.* 25 *H.* 8. 16. it was enacted, that it ſhall always be ſo aſſembled; and declared by the Clergy, that it ought ſo to be. 4 *Inſt.* 322.

And it cannot aſſemble without the King's Licence. *R.* 12 *Co.* 72.

And the Convocation is under the Power and Authority of the King. *Per* 3 *J.* 21 *Ed.* 4. 45. *b.*

And therefore, at every Parliament from the 22d *Ed.* 3. there was this Clauſe inſerted in the Writ directed to every Archbiſhop and Biſhop, *viz. Præmunientes Priorem & Capitulum (vel Decanum & Capitulum) Archidiaconos, totumq; Clerum Dioceſeos veſtræ, quod iidem Prior (vel Decanus) & Archidiaconi in propriis perſonis, dictumque Capitulum per unum, idemque Clerus per duos Procuratores, &c. interſint, &c. Dudg. Sum.* 233, 235, *&c.* 4 *Inſt.* 4.

The Archbiſhop of *Canterbury* and Archbiſhop of *York* make their Convocations, and Grants ſeverally. 21 *Ed,* 4. 46. *b.*

(B) Who ought to aſſemble.

IN a Convocation all the Clergy of the Province are preſent, in Perſon, or by Repreſentation. 4 *Inſt.* 322. 21 *Ed.* 4. 55.

The Archbiſhops and Biſhops meet in the Upper Houſe; the Deans, Archdeacons and Proctors of the Clergy in the Lower. 4 *Inſt.* 322.

(C) Their Privileges.

BY the *St.* 8 *H.* 6. 1. All the Clergy, called to Convocation by the King's Writ, their Servants and Familiars ſhall enjoy the Liberty in coming, tarrying, and returning, as the Commonalty called to Parliament enjoy.

(D) The Juriſdiction.

THE Convocation has Juriſdiction *in merè Spiritualibus*; as, Hereſy, Schiſm, *&c.* 4 *Inſt.* 322. *Vide Hereſy,* (B. 1.)

To make Faſting-days, Holy-days, *&c.* 21 *Ed.* 4. 45.

In Cauſes Eccleſiaſtical, if the King be concerned, there ſhall be an Appeal to the Upper Houſe of Convocation. 4 *Inſt.* 339, 340. *Vide Prærogative,* (D. 15.)

But the Convocation has no Power to bind the Temporalty, but only the Spiritualty. 21 *Ed.* 4. 45.

(E) How they make Canons.

Vid. Canons. BY the *St.* 25 *H.* 8. 19. The Clergy ſhall not attempt, claim, *&c.* nor enact or execute any Canons, *&c.* in their Convocation, unleſs they have the King's Licence to make and execute them, on Pain of Fine and Impriſonment.

And therefore, tho' they be aſſembled in Convocation by the King's Licence they cannot afterwards confer to make Canons, *&c.* without a ſpecial Licence for ſuch Purpoſe. *R.* 12 *Co.* 72.

So, after Canons are made in Convocation by the King's Licence, they cannot be executed before the Royal Aſſent to them. *R.* 12 *Co.* 72.

CONUSANCE.

Vide Fine, (E. 9, &c.)—*Pleader*, (3 K. 14, &c.)—*Statute Staple.*

Conuſance of Pleas.

Vide Courts, (P. 2, &c.)

COPY.

Vide Evidence, (A. 3.)

COPYHOLD.

(A) Copyholder.

(A. 1.) Who is.

A Copyholder is one, who within a Manor, in which there is a Cuſtom Time whereof, &c. for ſuch Tenure, holds Lands or Tenements to him and his Heirs, in Tail, or for Life, &c. at the Will of the Lord, according to the Cuſtom of the Manor. *Co. L.* 58. *Lit. S.* 73.

And he is called a *Copyholder*, becauſe he holds his Land by Copy of Court Roll of the ſame Manor. *Co. L.* 58. *a.*

Of antient Times they were called *Tenants in Villenage*, or *by baſe Tenure*, becauſe they held generally by *Villein Service*. *F. N. B.* 12. *C. Co. L.* 58. *a.* 62. 2 *Brow.* 77.

But they are called *Copyholders*, 1 *H.* 5. 11.

Tenants by the Verge, 14 *H.* 4. 34. *Lit. S.* 78.

Tenants by Roll at the Will of the Lord, 42 *Ed.* 3. 25.

Cuſtomary Tenants, by the *St.* 4 *Ed.* 1. *Extent. Manerii.*

Aſter Tenants, 2 *Rol.* 236.

(A. 2.) What Eſtate he has.

Tho' a Copyholder has an Eſtate at the Will of the Lord, yet it is according to the Cuſtom of the Manor. 4 *Co.* 21.

And therefore, the Lord cannot ouſt him, if he obſerves the Cuſtoms of the Manor. *Co. L.* 60. *b.* 62. *b.* 63. 2 *Co.* 17. *a.* *R.* 4 *Co.* 21. *b.* 24. *b.* 26. *Cro. El.* 103. 1 *Rol.* 510. *l.* 25.

And, if he be ouſted contrary to the Cuſtom, he ſhall not only ſue by Petition to the Lord, but may have Treſpaſs againſt him. *Co. L.* 60. *b.* 62. *b. Per Danby*, 7 *Ed.* 4. 19. *Per Brian*, 21 *Ed.* 4. 80. *Dal.* 62.

So the Lord cannot do any Act to determine his Intereſt: And therefore, if the King being Lord of a Manor grants Land by Copy, and afterwards grants the Fee of the ſame Land by Patent; the Intereſt of the Copyholder is not deſtroyed. *R.* 2. *Co.* 17. *a*, *Lane.* *R.* 4 *Co.* 24. *b*, *Murrel.*

So, if the Lord of a Manor, in which by Cuſtom the Wife of a Copyholder ſhall have Dower without other Admittance, grants the Freehold of a Copyhold to *A.* for the Life of the Copyholder, and afterwards to the Copyholder himſelf in Fee; the Eſtate of the Wife is not deſtroyed, becauſe the Copyholder continued his Copyhold Intereſt for his Life. *R. Hob.* 181. 1 *Rol.* 510. *l.* 40. *R.* 2 *Cro.* 126.

But a Copyholder has no Eſtate of Freehold; for that remains in the Lord. *Lit. S.* 81. 2 *Inſt.* 325.

(B) Copyhold, What.

(B. 1.) Ought to be Time out of Mind.

A Copyhold ought to be Time whereof, &c. for it cannot begin at this Day. *Co. L.* 58. *b.*

And therefore, if the Lord grants Land by Copy, which has not been ſo granted before, it is no Copyhold. *R.* 1 *Leo.* 56.

Tho' it continues in Grant by Copy for forty-ſeven Years. *R.* 3 *Leo.* 107.

And if the Lord afterwards grants it by Copy for a further Term of Years; he may enter as upon a Tenant at Will. *R.* 3 *Leo.* 108.

But a Continuance in Grant by Copy for fifty or ſixty Years, fixes a Cuſtomary Intereſt, if it be without Interruption. *Semb.* 3 *Leo.* 107.

Yet where a Grant was 10 *H.* 8. and the Lord entred 23 *H.* 8. for a Forfeiture, and afterwards it continued in Grant by Copy till 8 *Eliz.* That was an Interruption, and it ſhall be computed in Grant by Copy only from 23 *H.* 8. which being but forty-ſeven Years will not fix a Cuſtomary Intereſt. *R.* 3 *Leo.* 107.

(B. 2.) Within a Manor.

It ought to be Parcel of a Manor, or within a Manor. *Co. L.* 58. *b.*

But it is not neceſſary, that it continue Parcel of the Manor; for if the Lord grants the Inheritance of all the Copyholds within his Manor, whereby they are ſevered from the Manor, yet the Copyholds remain. *R.* 4 *Co.* 26. *b. Cro. El.* 103.

And the Grantee ſhall hold Cuſtomary Courts, and take Surrenders, and grant by Copy, tho' he cannot hold a Court Baron. *R.* 4 *Co.* 26. *b.* But *Semb. Cont. Cro. El.* 103.

So, if the Lord demiſes the Freehold of all the Copyholds within his Manor, for 2000 Years; the Copyholds remain, and the Leſſee ſhall hold Cuſtomary Courts, &c. *R.* 4 *Co.* 26. *b, Neale. Cro. El.* 395.

So, if the Lord grants the Inheritance of one Copyhold, it remains Copyhold, and ſhall pay Rents, Heriots, and other Services to the Feoffee, and ſhall be ſubject to Forfeiture for Alienation, Waſte, &c. as before. *R.* 4 *Co.* 24. *b.* 25, *Murrel. R.* 2 *Leo.* 208.

Yet the Feoffee cannot hold a Court, take a Surrender, or make an Admittance. *R.* 4 *Co.* 25.

And the Copyholder has no way to ſell, but by a Decree in *Chancery.* 4 *Co.* 25.

Or, he may ſurrender to the Uſe of the ſame Feoffee. *Per Fenner, Cro. El.* 252.

(B. 3.) Always demiſable.

Vide Poſt, (L.)

So a Copyhold ought to be at all Times demiſed, or demiſable, by Copy. *Co. L.* 58. *b.*

But it is ſufficient if it be demiſable, tho' it was not always demiſed. *Ibid.*

Tho' leaſed at Will only. 4 *Co.* 31.

And therefore, if the Lord holds a Copyhold, which eſcheated to him, in his Hands for many Years, he may afterwards demiſe it by Copy. *Co. L.* 58. *b.* 4 *Co.* 31. *a. R. Cro. El.* 699. 1 *Rol.* 498. *l.* 40.

So, if it comes into his Hands by any other Means. 4 *Co.* 31. *a. French.*

And his Heir, or Aſſignee, may afterwards re-grant it by Copy. 4 *Co.* 31. *a.*

So, if a Copyholder takes a Leaſe, or other Eſtate of the Manor, or of his Copyhold, whereby his Copyhold is deſtroyed, yet the Land may afterwards be granted by Copy; for it was always demiſable. *Ag.* 4 *Co.* 31. *b. Sav.* 70. *(Vide* 1 *Rol.* 498. *l.* 30. *Semb. Cont.)*

So, if the Lord, after a Copyhold eſcheats, &c. demiſes the Manor, and the eſcheated Tenement by expreſs Words, yet it may afterwards be granted by Copy;

Copy; for the Demiſe of the Manor includes the eſcheated Copyhold as Parcel of the Demeſnes, and the naming of it ſignifies nothing. *R. Cro. Car.* 521. *Vide Jon.* 449. *(Semb. Cont.)*

But if the Lord leaſes ſuch Copyhold for Life, or Years, or conveys it for any other Eſtate (except at Will) by Deed, or without Deed, it cannot afterwards be re-granted by Copy; for it was not always demiſable. *R.* 4 *Co.* 31. *a. Vide Poſt*, (L.)

So, if he makes a Feoffment, and afterwards enters for a Condition broken. 4 *Co.* 31. *a.*

So, if the Wife of a Lord has been endowed of it. *Ibid.*

Or, it has been extended upon a Statute, or Recognizance acknowledged by the Lord. *Ibid.*

So, if the King, being Lord, by Letters Patents grants an eſcheated Copyhold, *&c.* not knowing of it, tho' he was deceived. 1 *Rol.* 498. *l.* 30. *Jon.* 449. *Cont.* 2 *Dan.* 176. *R. Cont.* 2 *Rol.* 197. *l.* 5. *Vide Poſt*, (L.)

So, if the Lord grants Land to a Copyholder, by Bill under his Hand, for his Life. 1 *And.* 199.

Yet, if by a tortious Act it has been ſometimes not demiſable, when ſuch Act is avoided, it may be re-granted by Copy: As, if a Copyholder be ouſted and the Lord diſſeiſed, and there be a Deſcent after the Diſſeiſin, yet after Re-continuance, it may be granted by Copy. 4 *Co.* 31. *a.*

So, if a Copyhold has been recovered by a falſe Verdict, or an erroneous Judgment. *Ibid.*

So, if a Huſband, ſeiſed of a Manor in Right of his Wife grants by Indenture an eſcheated Copyhold, *&c.* the Wife after his Death may re-grant it by Copy. *Per* 2 *J. Cro. El.* 459. 2 *Rol.* 271. *l.* 25.

So, if Tenant for Life leaſes by Indenture, the Reverſion may be re-granted. *Per* 2 *J. Cro. El.* 459. 2 *Rol.* 271. *l.* 20.

Or, if Tenant in Tail leaſes. 2 *Rol.* 271. *l.* 24.

Or, Leſſee for Years of a Copyhold. 2 *Rol.* 271. *l.* 15.

(C. 1.) What Tenements are grantable by Copy.

A Manor may be granted by Copy. *Co. L.* 58. *b. R.* 11 *Co.* 17. *b. Nevil.* 2 *Cro.* 327, 260. *Yel.* 191.

So, all Lands and Tenements within the Manor. *Co. L.* 58. *b.*

So, the Herbage and *Veſtura Terræ. Co. L.* 58. *b. R.* 4 *Co.* 30. *b, Hoe. Tonſura Terræ. Per Gawdy*, 1 *Rol.* 498. *l.* 15.

So, Tithes; for they may be Parcel of a Manor, as well as a Rent-charge. *Dub. Cro. El.* 814. *R. Cro. El.* 413. *Per Rol.* 1 *Rol.* 498. *l.* 10. *Mo.* 355.

So, Underwood without the Soil. *R.* 4 *Co.* 30, *Hoe. Co. L.* 58. *b. Cro. El.* 413. *Mo.* 355.

And the Lord cannot take Underwood there in Common. *R. Cro. El.* 413. *Mo.* 355.

So, a Mill. *R.* 4 *Leo.* 241.

So, every Thing that concerns Lands and Tenements: As, a Fair appendant to a Manor. *Co. L.* 58. *b. Mo.* 355.

And a Market. *Cro. El.* 413. *Mo.* 355.

And a Fiſhery. *Mo.* 355.

And Common. *D. Cro. El.* 814.

But where a Manor is granted by Copy, it cannot have Freeholders, or a Court Baron, but a Cuſtomary Court for the Admiſſion of Copyholders. *R.* 2 *Cro.* 260. *Adm.* 2 *Cro.* 327.

Nor ſhall have Forfeiture of the Tenements. 2 *Cro.* 260.

Nor hold Plea in Writ of Right. *Ibid.*

(C. 2.)

(C. 2.) How granted.

If the Lord grants a Copyhold upon a Surrender, he ought to grant it according to the Intent of the Surrender.

And he cannot increaſe the Rent, or Services, or add a Condition. 2 *Rol.* 236.

But where a Copyhold comes to the Lord by Eſcheat, Forfeiture, &c. he may grant it *de novo* by Copy, rendring a greater Rent. 2 *Rol.* 236.

(C. 3.) What Lord may grant.

(C. 3.) *Dominus pro Tempore.*

Every one, having a lawful Intereſt in a Manor, may make voluntary Grants of Copyholds eſcheated, or come to his Hands, as well as Admittances, rendering the ancient Rents and Services, which bind him who has the Inheritance. 4 *Co.* 23. *b.* *Co. L.* 58. *b.* *Mo.* 112.

As, Tenant in Fee or Tail. 4 *Co.* 23. *b.*

Tenant for Life. *R.* 4 *Co.* 23. *b.*

Tenant by Curteſy. 4 *Co.* 23. *b.*

Tenant in Dower. *Ibid.*

Tenant by Statute-Merchant, Staple, or *Elegit.* 4 *Co.* 23. *b.* *Co. L.* 58. *b.*

Tenant for Years. 4 *Co.* 23. *b.* *Co. L.* 58. *b.* *R. Mod. Ca.* 63.

Guardian in *Chivalry*, or Socage. 4 *Co.* 23. *b.* *Co. L.* 58. *b.* *R. Ow.* 115. 2 *Cro.* 55, 98. 1 *Rol.* 499. *l.* 23. *Godb.* 143.

Tenant at Will of a Manor; for the Copyholder is in by the Cuſtom, without Regard to the Perſon, or Eſtate, of the Lord. 4 *Co.* 23. *b.* *Co. L.* 58. *b.* *Agr.* 6 *Co.* 60. *b.*

Feoffee upon Condition may make voluntary Grants, which ſtand after the Condition broken. *R.* 4 *Co.* 24. *a.*

So Grants by a Biſhop bind his Succeſſor, and the King when the Temporalties are in his Hands. 4 *Co.* 21, 23. *b.*

So Grants by a Prebendary, Parſon, &c. bind for ever. 4 *Co.* 23. *b.*

So, if the Lord takes a Wife, who is intitled to Dower by the Marriage, and afterwards makes a voluntary Grant; this binds the Wife after the Death of her Huſband. *R.* 4 *Co.* 24. *a.* *R.* 8 *Co.* 63. *b.* *Cont. Mo.* 94. *R. Acc. Mo.* 812.

So, if an Infant makes voluntary Grants, they bind for ever. 4 *Co.* 23. *b.*

Or an Ideot, or *Non Compos.* *Ibid.*

So, a Lunatic by his Steward. 2 *Dan.* 178.

So when a Reverſion is demiſable by Copy, Tenant in Dower may grant it by Copy, as well as the Poſſeſſion; and the Grant binds the Heir. *R.* 1 *Rol.* 499. *l.* 20. *Cro. El.* 662.

So, every other particular Tenant of a Manor. *R. Mo.* 147. *Cro. El.* 662. *Godb.* 143.

And the Grant is good, tho' the Reverſion does not fall in Poſſeſſion during the Eſtate of the Lord who made the Grant. *Cont. Per all the Judges except two.* *Mo.* 95. *Acc. per* 2 *J. Cro. El.* 662. *R.* 2 *Rol.* 41. *l.* 12. 2 *Cro.* 99. *R.* 1 *Rol.* 499. *l.* 20.

And if a Copyholder by Cuſtom has Eſtovers, Common, &c. appurtenant to his Copyhold, and Leſſee for Years, &c. excepting Wood, Waſte, &c. whereby they are ſevered from the Manor, makes a voluntary Grant, the Grantee ſhall have Common, Eſtovers, &c. as before; for he is not in by the Lord, but *paramount.* *R.* 8 *Co.* 63. *Mo.* 812.

But Tenant at Will of a Manor cannot grant a Copyholder Licence to alien for Years. *R.* 8 *Jac.* 1 *Rol.* 511. *l.* 10.

And if Tenant for Life of a Manor grants a Licence to alien for Years, it determines at his Death. *R.* 1 *Rol.* 511. *l.* 15.

So, if an Huſband is ſeiſed in Right of his Wife, the Wife ought to join in the Grant. 2 *Cro.* 99.

So, if a Copyhold comes to the Lord by Forfeiture, Eſcheat, &c. and he binds himſelf in a Statute, and afterwards re-grants the Copyhold, it ſhall be liable to the Stat. *R. Mo.* 94. 1 *Leo.* 4.

So, if the Lord grants a Rent-charge, and afterwards re-grants a Copyhold, it ſhall be liable to the Rent. *R.* 2 *Leo.* 152. 3 *Leo.* 59.

So, if the Lord grants a Rent-charge, and afterwards a Copyhold eſcheats, &c. and the Lord re-grants it, it ſhall be liable to the Rent. *R. Dy.* 270. *b. R. Cont.* 2 *Brow.* 208.

But if a Copyholder ſurrenders to the Lord, to the Uſe of *A.* and the Lord admits him; *A.* ſhall not be liable to the Statute or Charge of the Lord. *R.* 1 *Leo.* 4. *Dy.* 270. *b.*

(C. 4.) By Wrong. &c.

So Tenant of a Manor by Wrong, or defeaſible Title, may make an Admittance upon a Surrender, which will bind him who has the Right; for this is a lawful Act, to which he is compellable in Equity; As, a Diſſeiſor, Abator, or Intruder. 4 *Co.* 24. *a. Co. L.* 58. *b.*

Feoffee of a Diſſeiſor. 4 *Co.* 24. *a.*

Tenant by Sufferance. *R.* 4 *Co.* 24. 2 *Leo.* 46, 7.

Deviſee, tho' afterwards the Deviſor be found *Non Compos. Per Popham, Ow.* 28. *R.* 2 *Leo.* 46, 7.

Tho' a Surrender be to the Diſſeiſor *ut Dominus faciat voluntatem ſuam*, whereupon he grants it to *A.* in Tail according to the Intent of the Surrender. 2, 1 *Rol.* 503. *l.* 25.

But a Lord by defeaſible Title cannot make voluntary Grants to bind him who has the Right. *Co. L.* 58. *b.* 4 *Co.* 23. *b. Ow.* 28. *R.* 4 *Co.* 24. *a. Rous. Mo.* 236.

So he cannot admit to a greater Eſtate upon a Surrender than the Surrenderer can give: And therefore, if Tenant for Life, or in Tail, ſurrenders to a Diſſeiſor to the Uſe of *A.* for Life, or in Tail, and the Diſſeiſor admits accordingly, this does not bind the Diſſeiſee. 1 *Rol.* 503. *l.* 27.

So he cannot accept a Surrender to the Uſe of himſelf, but ſuch Surrender will be void; as, an Executor *de ſon tort* cannot retain for his own Debt. *R.* 2 *Jon.* 153. 1 *Vent.* 359. 2 *Mod.* 287.

And if a Lord, who has a defeaſible Title, makes a voluntary Grant, Entry or Recovery of the Manor by the Diſſeiſee avoids it. *R. Poph.* 71.

So, if a Deviſee for Payment of Debts makes a Grant, and the Wife is endowed of the third Part of the Manor, and this Copyhold is aſſigned for her third, ſhe ſhall avoid the Grant. *R. Dy.* 251. *a.*

(C. 5.) What Steward may grant.

A Grant by any Steward, who has Colour of Title, is good; and therefore, if two are joint Stewards of a Manor by Patent, and one of them holds a Court and makes Grants, it is ſufficient. *R. Mo.* 112.

So, if the Clerk of a Steward holds a Court, and makes Grants; for the Tenants cannot examine his Authority, neither need he give them an Account of it. *Ibid.*

So, if there be a Steward *ad exequend' per ſe aut Deput'* and he makes a Deputy *pro hac vice. R. Cro. El.* 48.

So, if a Deputy of a Steward deputes another, who holds Courts and makes Grants; tho' he has no Title, for a Deputy cannot make a Deputy. *R. in B. R.* 12 *W.* 3. *inter Parker and Keck. R.* 1 *Leo.* 288. *Vide Sal.* 95. *(Comyns's Rep.* 84.)

So, if a Deputy, to take a Surrender to *A.* in Fee, takes Surrenders, which is not purſuant to his Authority; yet it is ſufficient. *R.* 1 *Leo.* 289.

So, if a Deputation be to take a Surrender to *A.* in Fee, and he takes a conditional Surrender; it is ſufficient. *R.* 1 *Leo.* 289. *Adm. Cro. El.* 48.

But a Grant by a Steward, contrary to the Command of the Lord, is void. *Per Poph. Cro. El.* 699.

Or, by leſs Services. *Cro. El.* 699.

Yet a Grant by the King's Steward of a Copyhold eſcheated, without Warrant, is good, tho' not agreeable to his Duty. *R.* 4 *Co.* 30. *a.*

(C. 6.) By what Words.

Vide Poſt, (F. 6.)

A Grant to *A. Habendum* to him and his Wife, is void to the Wife, ſhe being named only after the *Habendum*. *R.* 1 *Rol.* 67. *l.* 45. *Vide Poſt*, (F. 6.)

So a Grant to *A. Habendum* to him, his Wife, and Son, is void to the Wife, and Son. *R.* 2 *Rol.* 68. *l.* 10.

So a Grant to *A.* and his Son, who has ſeveral Sons, is void for Uncertainty. *R.* 2 *Cro.* 374.

Otherwiſe, if it be averred that *A.* had but one Son. *R.* 2 *Cro.* 374.

(C. 7.) What Eſtate.

(C. 7.) In Fee.

The Lord may grant a Copyhold to hold to a Man and his Heirs in Fee-ſimple. *Lit. S.* 73.

So a Copyhold may be granted to *A.* and his Heirs, upon Condition, that he pay 100 *l.* to *B.* and if he does not pay, to *B.* and his Heirs. *Per Beamount*, *Cro. El.* 361. *Semb.* 1 *Rol.* 137, 254.

So it may be granted to ſeveral and their Heirs, by which they are Joint-tenants.

And if it be granted to four and their Heirs equally to be divided, they are Joint-tenants, and not Tenants in Common. *Per Holt, but* 2 *J. cont. in B. R. inter Fiſher and Wigg. T.* 12 *W.* 3. *Vide Sal.* 391. (*Comyns's Rep.* 88.)

(C. 8.) In Tail.

So, by Cuſtom, co-operating with the *St. W.* 2. 1. *de Donis*, a Copyhold may be granted in Tail. *Lit. S.* 73. *Co. L.* 60. *a. b. Adm.* 1 *Sid.* 314. *R.* 3 *Co.* 8. *Mo.* 128. *Per* 2 *J. Poph.* 34, 35. *R. Poph.* 128. *Semb.* 1 *Rol.* 48. *R. Cart.* 22. *D.* 2 *Brow.* 77, 44. *R.* 1 *Rol.* 838. *l.* 20.

And if a Cuſtom allows a Grant to a Man and his Heirs, it warrants alſo a Grant to him and the Heirs of his Body. *R.* 4 *Co.* 23, *Gravenor. Co. L.* 52. *b. Poph.* 35. *Semb. per Holt, M.* 2 *Ann. Vide* 6 *Mod.* 63, 66.

But it is no Evidence of a Cuſtom to make a Grant in Tail, that Land has uſed to be granted to a Man and the Heirs of his Body, unleſs there has been alſo a Remainder after ſuch Eſtate. *Co. L.* 60. *b.*

Or, the Iſſue has avoided the Alienation of his Anceſtor, *Ibid.*

Or, has recovered in *Formedon in Diſcender, &c. Ibid.*

And it ſeems, that the *St. de Donis*, without a Cuſtom, does not make an Entail; for it does not extend to Copyholds. *Co. L.* 60. *a. R.* 3 *Co.* 8. *Vide Poſt*, (N.) *R. Cro. El.* 717. *Godb.* 369.

[A Copyhold to Huſband for Life, Wife for Life, Heirs of the Bodies of Huſband and Wife, Remainder in Fee to the Survivor, is an Eſtate-tail after Poſſibility of Iſſue extinct in the Wife who ſurvives, and the Eſtate veſts in the Perſon who is Heir of the Body of both Huſband and Wife. *Sutton* v. *Stone*, *M.* 1740. 2 *Atkyns* 101.]

(C. 9.) Eſtate tail, how barred.

But if by Cuſtom a Copyhold may be entailed, it may alſo be barred. *Co. L.* 60. *b. Ag.* 1 *Rol.* 49.

And therefore, a Common Recovery may be in the Lord's Court to bar ſuch Entail. *Dub.* 4 *Co.* 23. *a. Cro. El.* 372, 391. *R.* 1 *Rol.* 506. *l.* 10. *Agr. Mo.* 753, 358.

Tho' there be not any ſpecial Cuſtom to warrant ſuch Recovery. *R.* 1 *Rol.* 506. *l.* 20. *D. Mo.* 358. *Per Holt obiter in the Caſe of Hunt and Bourn.* (*Vide Sal.* 340.)

So, by Cuſtom, it is a good Bar to an Entail, that a Copyholder commits a Forfeiture by alienating without Licence, and the Forfeiture is preſented in Court, and thereupon the Lord ſeiſes it, and afterwards makes a Grant to *A.* and his

his Heirs. for whoſe Benefit the Forfeiture was intended. *R.* 2 *Sand.* 422. 1 *Sid.* 314. *Dub. Sti.* 450.

Or, that a Copyholder ſurrenders to *A.* and his Heirs, who ſhall commit a Forfeiture, *&c.* *R.* 1 *Sid.* 314.

In ſuch Caſe the Lord cannot admit any other, than the Perſon for whoſe Benefit the Forfeiture was intended. *R.* 2 *Sand.* 422.

And, if the Lord does otherwiſe, a Purchaſer ſhall avoid all meſne Acts when he is admitted, as well as upon a Surrender. 2 *Sand.* 422.

So, a Copyhold in Tail ſhall be barred, by Acceptance of a Feoffment from the Lord and afterwards a Fine levied at Common Law. *R. Cart.* 23. *Vide Poſt*, (N.)

Tho' there be a Cuſtom, that it ſhall be barred by Forfeiture, *& non aliter*; for ſuch Cuſtom (as to the *non aliter*) is void. *R. Cart.* 23.

But an Entail cannot be barred by Surrender only; for a Cuſtom to bar by Surrender alone, is void. *Per Coke, Lo.* 188. *Cont.* if the Cuſtom allows it, *Semb. Poph.* 129. 2 *Brow.* 121.

[There may be a good Cuſtom in a Manor, that Tenant in Tail may Surrender, and bar his Iſſue, without ſuffering Recovery; or that he may ſuffer Recovery in the Manor Court, and have the ſame effect. *Everall* v. *Smalley, M.* 17 *G.* 2. *Str.* 1197. *Wilſ.* 26.]

[In a Manor where Copyhold may be intailed either by ſpecial Cuſtom, or by the general Doctrine of Surrender in Fee, *vel aliter, &c.* if a Cuſtom does not appear to bar by Recovery in that Manor, it may be barred by Surrender; for otherwiſe it would create a Perpetuity. *Moore* v. *Moore, T.* 1755. 2 *Vezey* 596.]

[And this Surrender to the Uſe of the Will only. *Ibid. Car* v. *Singer, P.* 1750, *in C. B.* 2 *Vezey* 603.]

[By Cuſtom, it may be barred by Surrender, and wherever Tenant in Tail of a Freehold can bar the Eſtate by any Means, there Tenant in Tail of *ſuch* Copyhold may bar by Surrender. *Martin* v. *Mowlin, P.* 33 *G.* 2. 2 *B. M.* 969.]

[In *ſuch* Manor, if *A.* deviſes to his Son *B.* and *C.* his Wife, and the Heirs of the Body of *B.* on *C.* begotten; this Eſtate may be barred by Surrender of *B.* alone. *Ibid.*]

If a Common Recovery is erroneous, it cannot be reverſed, but by a Petition to the Lord, in Nature of a Writ of Error. *Adm. Ca. Parl.* 67.

And if the Lord refuſe to receive ſuch Petition, he ſhall not be compelled to it in Equity, *R. in Ch. upon Dem. to a Bill, and affirmed in Parliament, Ca. Parl.* 67. *R.* 1 *Ver.* 368.

Recovery in Value ſhall be only of other Copyhold in the ſame Manor. *Mo.* 359.

So Cuſtom allows a Grant of Copyhold for Life. *Lit. S.* 73.

And when, by Cuſtom, a Grant may be to a Man and his Heirs, the ſame Cuſtom warrants a Grant of any leſs Eſtate, as for Life, &c. tho' there never was ſuch a Grant before. *R. Co. L.* 52. *b.* 4 *Co.* 23, *Gravenor. R.* 1 *Leo.* 56. (C. 10.) For Life, &c.

Tho' the Cuſtom ſays, that there ſhall be a Grant in Fee *ſolummodo*; for that cannot reſtrain what is incident by Law. *R.* 1 *Rol.* 511. *l.* 30.

So, by a Cuſtom allowing a Grant for three Lives, it may be granted to three for the Lives of two. *R.* 1 *Rol.* 511. *l.* 40.

Or, for two Lives, or one Life. *Per Poph.* 35.

Or, to one for the Life of himſelf, and two others *ſucceſſivé*. *R.* 1 *Sal.* 188.

But a Grant to *A.* for his Life, Remainder for the Life of his Wife, and the firſt Son which he may afterwards have, is warranted only for his own Life. *R. Mo.* 677.

So, by a Cuſtom allowing a Grant for Life, it may be granted *durante Viduitate*. *R.* 4 *Co.* 30, *Down. Cro. El.* 323.

So, by a Cuſtom which allows a Grant to three *ſucceſſivé ſicut nominantur*, a Grant may be to *A.* for three Lives. *R. Mod. Ca.* 67. 1 *Sal.* 188.

If

If a Grant be for the Lives of him and his two Brothers, his Son ſhall have it; And if he dies without Iſſue, his Executor, or Adminiſtrator, and not the other Lives. 1 *Ver.* 415.

If a Grant be for three Lives *ſucceſſivé ſicut nominantur*, by Cuſtom the Wife of the Grantee may have *Freebench*, whereby the Eſtate is continued during the Life of the Wife. 1 *Lev.* 21.

If the Lord makes a Leaſe for forty Years, from the Death, Surrender, or other Determination of the Eſtate, and the three Lives all die; the Leaſe does not commence till the Death of the Wife: For it ſhall be ſuch a Death as determines the Eſtate. *Per* 2 *J.* 1 *Lev.* 21.

So a Cuſtom allowing a Grant for Life, *&c.* warrants a Grant for Years. 4 *Co.* 23. *Co. L.* 52. *b.*

(C. 11.) In Remainder

So, by Cuſtom, a Copyhold may be granted in Remainder. *Adm.* 1 *Sand.* 151. *R.* 4 *Leo.* 9.

And if a Cuſtom allows a Grant in Fee, it warrants a Grant in Tail for Life, or Years, Remainder to another and his Heirs. *Co. L.* 52. *b.* *Poph.* 35.

So a Surrender may be to *A.* in Fee, and if he dies within Age, and unmarried, to *B.* in Fee; the Remainder to *B.* is good. *Semb.* 2 *Rol.* 791. *l.* 40.

So he in Remainder may be admitted to it by himſelf. *Lut.* 758.

But a Grant in Remainder may be reſtrained to the Aſſent of the Tenants. *Dub.* 3 *Leo.* 226.

(C. 12.) Reverſion.

So a Reverſion of a Copyhold Eſtate may be granted, but not without a ſpecial Cuſtom. *D. Mar.* 6. *Vide Poſt*, (F. 6.) *R.* 3 *Leo.* 239.

So a Man admitted to a Reverſion may ſurrender to another.

Or, a Moiety or two Parts, *&c.* *Ray* 18.

So, if a Leaſe be of a Copyhold by Licence rendring Rent, the Copyholder may ſurrender by Name of a Reverſion. *Vide Poſt*, (F. 6.)

And there needs no Attornment; for the Admittance is *tantamount* to an Inrolment, and ſupplies it. *Per* 2 *J.* 1 *Leo.* 297. *R. Hob.* 177. *R. Ray* 18.

(D. 1.) Deſcent of a Copyhold.

THO' a Copyholder holds at the Will of the Lord, yet by Cuſtom, his Eſtate is deſcendible to his Heir. *R.* 3 *Co.* 21, *Brown.*

And the Deſcent ſhall be regulated by the Rules of the Common Law, as incident to an Eſtate deſcendible. *R.* 4 *Co.* 22. *a.*

[A Copyholder, Heir to her Mother, before Admiſſion deviſes to *A.* and dies without Admiſſion or Surrender, the Lands ſhall deſcend to her Heir on the Part of her Mother. *Smith* v. *Trigg*, *M.* 8 *G.* *Str.* 487.]

And therefore, if a Copyholder, having a Son and a Daughter by one Venter, and a Son by another Venter, makes a Leaſe for Years and dies, and afterwards the eldeſt Son dies before Admittance; the Daughter ſhall have it, not the Son. *R.* 4 *Co.* 21. *Brown.* *Dy.* 291. *b.*

If there be a Copyholder for Years, Remainder to *A.* and his Heirs; *A.* dies during the Years; his Siſter of the whole Blood ſhall take, for the Poſſeſſion of the Termor was his Poſſeſſion. *R.* 1 *Vent.* 261. 1 *Mod.* 120.

So, if a Copyholder dies, and the Guardian of the Heir be admitted; his Poſſeſſion is ſufficient to cauſe the Siſter of the whole Blood to inherit. *Dy.* 292. *a.* 1 *Rol.* 502. *l.* 50. *Dal.* 110.

So, if the Heir dies before Admittance, or Guardian aſſigned; if the Homage find him to be Heir, it is ſufficient to cauſe his Siſter to inherit. *R. Mo.* 125.

Otherwiſe, if, by Cuſtom, the Lord may demiſe to a Stranger during the Minority of the Heir; the Poſſeſſion of the Stranger does not cauſe the Siſter to inherit. *D. Dal.* 110.

So, if the Heir of a Copyholder dies before Admittance, the Deſcent ſhall be to the Heir of the whole Blood. *R. Dy.* 291. *b.* *Mo.* 125.

So, if a Copyholder dies, his Wife *privement enſeint* with a Son, and his Daughter, as Heir, is admitted, and afterwards the Son is born; he ſhall have it, and enter upon the Daughter.

So, if a Copyhold be limited in Remainder, it ought to veſt during, or at the End of the particular Eſtate. 1 *Rol.* 238, 438.

And if the Remainder be contingent, it ſhall be in Abeyance till the Contingency happens. *R.* 417. *l.* 45.

But a Surrender by a Copyholder for Life, before the Contingency, does not defeat it. *Semb.* 2 *Rol.* 794. *l.* 45. *Vide Poſt* (F. 14.)

But, by ſpecial Cuſtom, a Deſcent may be contrary to the Rules of the Common Law. *Vide Poſt*, (K. 4.)

(D. 2.) What an Heir may do before Admittance.

And the Heir, upon a Deſcent, may enter and take the Profits, before Admittance. *R.* 4 *Co.* 22. *b*, *Brown.* 4 *Co.* 23. *b*, *Clerk.* *Dy.* 291. *b.*

And ſhall have Treſpaſs. 4 *Co.* 23. *b*, *Clerk.* *R. Noy* 172.

And may make Leaſes. *R. Mo.* 596.

And the Leſſee may maintain an Ejectment, before the Admittance of his Leſſor. *R.* 1 *Leo.* 100.

So he may ſurrender to the Uſe of another, before Admittance; but the Lord ſhall not loſe his Fine. *R.* 4 *Co.* 22. *b.*

So he may ſurrender a Reverſion deſcended to him, before Admittance. *R.* 1 *Rol.* 499. *l.* 25. *Cro. El.* 662. *R.* 2 *Cro.* 36.

So, if the Heir dies before Admittance, his Heir ſhall enter and take the Profits, and ſhall have Treſpaſs, before his Admiſſion. *R.* 4 *Co.* 23. *b. Clerk.*

If a Surrender be to *A.* for Life, Remainder to his eldeſt Son in Fee, and *A.* dies; his Heir ſhall enter before Admittance, tho' he claims by Purchaſe. *Per Hale*, 1 *Mod.* 120.

So the Lord may avow for his Rent, before Admittance. *Kit.* 87. *b.*

But he ſhall not be ſworn upon the Homage, before Admittance. *Ibid.*

(E) What Collateral Qualities a Copyhold ſhall have.

BUT a Copyhold ſhall not have the collateral Qualities of other Inheritances, which do not concern the Deſcent, without ſpecial Cuſtom: As, a Huſband ſhall not be Tenant by the Curteſy of a Copyhold, without ſpecial Cuſtom. *R.* 4 *Co.* 22. *a*, *Brown.* *R.* 4 *Co.* 22. *b*, *Rivet.* *R. Cro. El.* 361. 1 *And.* 192.

But, by ſpecial Cuſtom, he ſhall be Tenant by the Curteſy. *Vide Poſt*, (K. 1.)

A Wife ſhall not be endowed. 4 *Co.* 21, *Brown.* *R.* 4 *Co.* 30. *b*, *Shaw.* *Mo.* 410. *Cro. El.* 426.

But, by ſpecial Cuſtom, ſhe ſhall. *Vide Poſt*, (K. 2.)

So a Deſcent of a Copyhold does not toll Entry. 4 *Co.* 22, *Brown.* *R.* 4 *Co.* 23, *Gravenor.* *R.* 2 *Cro.* 36. *Poph.* 35.

So, if upon a Deſcent the Lord admits a Stranger, before the Heir, it is no Diſſeiſin. *R.* 3 *Leo.* 210.

So there ſhall be no Occupant of a Copyhold, but it goes to the Lord. *Noy* 47. *Vide Poſt*, (F. 14.)

So a Copyhold ſhall not be Aſſets in the Hands of the Heir to charge him upon a Bond of his Anceſtor. 4 *Co.* 22.

So a Surrender of a Copyhold with Warranty, the Warranty is void. *Mo.* 352.

So a Surrender by a Copyholder ſeiſed in Tail, does not make a Diſcontinuance; for there is no Livery, nor Warranty. 4 *Co.* 23. *Cont. R. Cro. El.* 483, 717. *Cont. per Walmſly*, 2 *Cro.* 105. *Acc. Mo.* 358. *R. acc. Mo.* 753. *R. acc. Cro. El.* 148.

So a Surrender by a Huſband, ſeiſed in Right of his Wife, does not make a Diſcontinuance. *R.* 4. *Co.* 23, *Bullock.* *R. Mo.* 596.

A Surrender by an Infant does not put his Heir to a *Dum fuit infra Ætatum.* *R.* 1 *Leo.* 95.

So a Surrender in Fee by a Copyholder for Life is no Forfeiture. *Vide Poſt*, (M. 2.)

So a Surrender by a Copyholder for Life, and him in Remainder in Fee, being an Infant, does not bar, nor put the Heir of the Infant to a *Dum fuit infra Ætatem*. *Per* 2 *J. Cro. El.* 90.

So the Lord cannot grant the Cuſtody of Cuſtomary Lands to a Committee, if his Copyholder is a Lunatic, without ſpecial Cuſtom. *Per Hob.* 215. *Hut.* 16. *Vide Poſt*, (K. 5.)

Nor the Guardianſhip of his Copyholder, if he be an Infant. *R. Lut.* 1190. *Vide Poſt*, (K. 5.)

But if a Copyholder dies, his Heir within the Age of fourteen Years, his *prochein Amy* ſhall be a Guardian to him, if there is no ſpecial Cuſtom in the Manor for it. *R.* 2 *Rol.* 40. *P.*

So, if Tenant for Life, Remainder to the firſt and other Sons in Tail, Remainder to *B.* in Fee, purchaſes the Fee, and *B.* ſurrenders; the contingent Remainder to the firſt and other Sons is not deſtroyed, for the Freehold in the Lord ſupports it. *R.* 2 *Ver.* 243.

So a Copyholder cannot take Houſebote, Hedgebote, Cartbote, *&c.* as a Freeholder for Life or Years, without ſpecial Cuſtom. *R. Cro. El.* 5. *Cont. Cro. El.* 361. 1 *Brow.* 132. *Fide Poſt*, (K. 7.)

(F.) Surrender of a Copyhold.

(F. 1.) In Court.

IF a Copyholder will alien his Land to another, he ought according to Cuſtom to make a Surrender to his Uſe. *Lit. S.* 74.

And every Copyholder may ſurrender in Court, without alledging in pleading any ſpecial Cuſtom for it. *Co. L.* 59. *a.* 9 *Co.* 75. *b.*

(F. 2.) Out of Court.

(F. 2.) To the Lord.

So a Copyholder may ſurrender to the Lord himſelf, out of Court, without alledging a ſpecial Cuſtom for it. *Co. L.* 59. *a.*

So, out of the Manor. *Adm.* 1 *Sal.* 184.

(F. 3.) To the Steward.

So he may ſurrender, out of Court, to the Steward. *R.* 4 *Co.* 30. *b.* 1 *Sal.* 184. (*Vide* 2 *Cro.* 526.)

Tho' it be to the Uſe of the Steward. *R. Cro. El.* 717.

Tho' the Steward be retained only by *Parol*. *R.* 4 *Co.* 30. *b.* 1 *Leo.* 228. *R.* 2 *Cro.* 526.

So a Steward, out of Court, may examine a *Feme Covert*, without a ſpecial Cuſtom for it. *R.* 2 *Cro.* 526.

And may depute another to take the Surrender. 1 *Sal.* 95.

And a Surrender to ſuch a Deputy in *Ireland*, *&c.* is good.

So a Surrender may be to the Steward, out of the Manor. *Semb.* 1 *Sal.* 184.

So a Surrender to *A.* deputed by a Deputy of the Steward, is good. *R.* 1 *Sal.* 95.

But a Surrender cannot be to a Steward, out of the Manor, if he be by *Parol*. *R. Godb.* 142.

(F. 4.) To Tenants, *&c.*

So, by ſpecial Cuſtom, he may ſurrender to two Tenants of the Manor. *Co. L.* 59. *a.* *Lit. S.* 79.

But he ought in pleading to alledge a ſpecial Cuſtom for it. *Co. L.* 59. *a.*

Or, to the Reeve or Bailiff, *&c.* *Co. L.* 59. *a.* *Lit. S.* 79.

Or, to the Bailiff in the Preſence of two Tenants, *hoc teſtifican'*. *Kit.* 102. *b.*

Or, to one Tenant. *Ibid.*

Or, to one Tenant in the Preſence of others. *Ibid.*

And

And if a Copyholder covenants to make a Surrender; if he ſurrenders to two Tenants, it is ſufficient. *R.* 1 *Lev.* 293. 1 *Mod.* 61.

The Heir may ſurrender a Reverſion to two Tenants, before Admittance. 1 *Rol.* 499. *l.* 45.

So, if he alledges a Surrender to two Tenants *ſecundum Conſuetudinem*; it is ſufficient upon Covenant to ſurrender, without alledging a Cuſtom for it. *R.* 1 *Mod.* 61.

But Huſband and Wife cannot ſurrender to two Tenants; for they cannot take an Examination of the Wife, without ſpecial Cuſtom. *R. Cro. El.* 717.

And a Cuſtom, that Tenants who take a Surrender, if they do not preſent it at the next Court, forfeit their Copyholds, is good. *Adm. per Holt*, 3 *Ann. int' Stint and Blount.*

But an Action upon the Caſe does not lie againſt Tenants, for refuſing to take a Surrender. 1 *Rol.* 108. *l.* 40.

(F. 5.) By Attorney.

A Copyholder may ſurrender in Court by Attorney, without a ſpecial Cuſtom to warrant it; for he may ſurrender by the general Cuſtom of *England*, which is the Common Law, and then it is incident to do it by Attorney. *R.* 9 *Co.* 75. *b.* 1 *Rol.* 500. *l.* 50. *Per Wray*, 2 *J. Cont.* 1 *Leo.* 36.

[But a Cuſtom, that a Surrender muſt be made in Perſon, unleſs in Special Caſe of Diſability, is not contrary to Law. *Mitchel* v. *Neal*, *M.* 1755. 2 *Vezey* 679.]

[A Purchaſer of a Copyhold is not obliged to accept of a Surrender by Attorney, but may inſiſt on the Vendor's ſurrendering in Perſon in Court. *Ibid.*]

But he cannot ſurrender into the Hands of two Tenants, by Attorney; for ſuch Surrender, tho' in Perſon, is not warranted, without ſpecial Cuſtom. *R.* 9 *Co.* 76. *a. b.* 1 *Rol.* 501. *l.* 5.

And if he covenants to ſurrender on Requeſt, the refuſing to execute a Letter of Attorney to make a Surrender is no Breach. *R. Cro. Car.* 299.

An Attorney who makes a Surrender, ought to make it in the uſual Form; as, by the Rod, *&c.* according to the Cuſtom of the Manor. *R.* 9 *Co.* 76. *b.* 1 *Rol.* 501. *l.* 10.

And he ought to make it in the Name of the Copyholder, not in his own Name. 9 *Co.* 76. *b.*

Or ſhew his Authority, and ſay, that he ſurrenders by Force of ſuch Authority. *R.* 9 *Co.* 77. *a.* 1 *Rol.* 501. *l.* 15.

But a Deputy may act in his own Name, as well as the Name of his Principal. *R.* 1 *Sal.* 96.

And therefore, a Surrender to him who is deputed by the Steward, without taking Notice of his Authority, is good. *Ibid.*

(F. 6.) By what Words.

A Surrender in general Words *(in manus Domini)* is ſufficient without limiting any Eſtate; for the Lord is but an Inſtrument, for the Admiſſion of the *Ceſtuy que Uſe*. *Co. L.* 59. *b.* 4 *Co.* 29, *Bunting*. *Vide Ante*, (C. 6.)

So he, who has a Fee, may ſurrender to another in Fee, or for a leſs Eſtate, as in Tail, or for Life, without ſpecial Cuſtom. *Per* 2 *J. Godb.* 20.

So, if a Man has made a Surrender to *A.* for Life, he may afterwards ſurrender the Reverſion, or Remainder of the Copyhold, if he be not reſtrained by the Cuſtom. *R.* 4 *Leo.* 9. *Adm.* 1 *Sand.* 151. *Vide Ante*, (C. 11, 12.)

And if he has made a Leaſe by Licence, he may afterwards ſurrender his Copyhold by Name of the Reverſion. *R.* 2 *Rol.* 45. *l.* 5. *Semb.* 3 *Bul.* 81. *R. Hob.* 177.

But it ought to be an actual Surrender; for if a Man comes into Court, and renounces his Copyhold, it does not amount to a Surrender. *R.* 1 *Rol.* 502. *l.* 5.

Or,

Or, if he takes a new Copy for his Life; this is not a Surrender of his firſt Eſtate, (at leaſt but for his Life;) for a Copyhold ſhall not be extinct by a Surrender in Law. *R.* 1 *Rol.* 501. *l.* 50. 3 *Bul.* 81. and there *Semb.* that was a Surrender to the Uſe of himſelf for Life.

So, if a Copyholder joins with the Lord in a Fine *Sur Conuiſance de Droit* to *A.* it does not amount to a Surrender, for the Cuſtomary Intereſt does not paſs by the Fine; and therefore a ſecond Life, where, by the Cuſtom, a Surrender of the firſt Life bars him, is not barred by the Fine. *R. Ray.* 503. 2 *Jon.* 153. *Pol.* 564.

But if the Lord pretends a Forfeiture, and the Copyholder agrees afterwards with the Lord to accept a Grant of Part for his Life, that amounts to a Surrender. *R.* 1 *Leo.* 191.

So, if a Copyholder in Court prays the Lord to accept. *Per Hob. Hut.* 65.

So a Surrender to the Uſe of *A. Habendum* to him and his Wife, is void to the Wife, ſhe being named only after the *Habendum*. *Semb.* 2 *Rol.* 67. *l.* 52.

Yet, if the Surrender was general, without Mention of any Uſe, and the Surrenderor takes a new Copy which ſays, *Quod ipſe cepit extra Manus Domini cui Dominus conceſſit Habendum* to him and his Wife; it is good to the Wife, for it was granted to no Body before the *Habendum*, and upon ſuch a general Surrender and Acceptance of a new Grant, the Surrender ſhall be intended to both. *R.* 2 *Rol.* 67. *l.* 25. 2 *Cro.* 434. *Poph.* 125.

So a Surrender, to commence after the Death of the Surrenderor, is void. *R.* 4 *Leo.* 8. 2 *Rol.* 61. *C.* 2 *Cro.* 376. *R. Godb.* 451.

So a Surrender to an Infant in Fee, and if he dies before Twenty-one, to *B.* If the Contingency does not happen in the Life of the Surrenderor, tho' it happens afterwards, the Eſtate to *B.* is void. *R.* 2 *Rol.* 794. *l.* 50.

Yet, a Surrender in Writing to *A.* and at the End a *Memorandum*, that the Surrender ſhall not be of Effect till the Death of the Surrenderor; the *Memorandum* is void, and the Surrender being compleat before ſhall be good. *R.* 2 *Rol.* 61. *C.*

So a Surrender to *A.* if an Infant *in Ventre ſa Mere*, dies within Age, is void *R.* 2 *Cro.* 376. 2 *Bul.* 272. For a Surrender cannot take Effect upon a Contingency. 1 *Rol.* 109, 137, 253. *Godb.* 264.

So a Surrender to an Infant in *Ventre ſa Mere* is void; becauſe it commences at a future Day. *Semb.* 1 *Rol.* 253.

But a Surrender to *A.* for Life, and afterwards to an Infant in *Ventre ſa Mere*, is good, if the Infant is born in the Life of *A.* *Semb.* 1 *Rol.* 254. 2 *Rol.* 415. *l.* 55.

So a Surrender to commence at a future Day is void. *Semb.* 1 *Rol.* 137, 253. *Godb.* 265.

So a Surrender does not paſs the Fee without the Word, *Heirs:* As, if a Surrender be to *A.* and his Son, and for want of Iſſue of the Body of the Son, Remainder to *B.* The Son has it only for Life. 1 *Rol.* 839. *l.* 50.

(F. 7.) By what Perſons.

So a Surrender by him, who has no Ability, as, by an Infant, is void; and he may enter at full Age, tho' the Grantee was admitted. *R. Mo.* 597. *R.* 1 *Leo.* 95.

So a Surrender by the Huſband, of a Copyhold of him and his Wife, is void as againſt the Wife. *Adm.* 4 *Leo.* 88. *Vide Ante*, (E.)

So a Surrender by Surrenderee, before Admittance, is void. *Vide Poſt*, (G. 1.)

So, if a Deviſe be to *A.* upon Condition, that he pay 100*l.* to *B.* and if not, then to *B. A.* does not pay; *B.* cannot ſurrender, before Admittance and actual Entry. *Per Holt at the Aſſizes*, 13 *W.* 3. *int' Clerk and How.* (*Vide* 1 *Ld. Ray.* 726.)

So a Surrender by a Diſſeiſor is void; As, if he in Reverſion enters upon Tenant for Life. *R.* 2 *Mod.* 32.

But

But a Surrender by Husband and Wife, (the Wife being examined by the Steward according to the Custom,) binds the Wife. *Adm. Lit.* 274. *Vide Baron and Feme*, (G. 4.)

[Whether *Feme-covert* can surrender without her Husband's joining, though in his Presence. *Dub. Taylor* v. *Philips*, *P.* 1749. 1 *Vezey* 229.]

And if a Husband grants a Copyhold of his Wife to the Lord, who grants it to a Stranger, and the Wife after the Death of her Husband recovers, and grants it to the Lord; he shall not have it against his own Grant to the Stranger. *Per Wray*, 4 *Leo.* 88.

(F. 8.) To what Use.

The Surrenderor ought to declare, upon a Limitation of the Uses, what Estate the Surrenderee shall have; for if he surrenders to the Use of *A.* generally, *A.* takes but for Life. *Co. L.* 59. *b.* *R.* 4 *Co.* 29, *Bunting.*

[If the Uses are indorsed on the Back of the Surrender, and signed by the Steward, it is sufficient, though they are not specified in the Rolls. *Car.* v. *Ellison*, *P.* 1744. 3 *Atkyns* 73.]

If he surrenders without limiting any Use at all, the Lord shall have it. *Kit.* 81. *b.* But the Lord shall have it to the Use of the Surrenderor. *Semb.* 1 *Rol.* 253.

Yet, if a Surrender be without any Use expressed, and at the next Court the Surrenderor and his Wife are admitted, it shall be intended that the Surrender was to their Use. *R. Poph.* 125. *Vide Ante*, (F. 6.)

So, by Custom, it may be, that upon a Surrender to another without limiting any Estate, the Lord shall admit him in Fee. *R.* 1 *Rol.* 48.

Or, upon Surrender to another for Money, without limiting any Estate. *R.* 1 *Rol.* 48.

By special Custom, a Surrender *sibi & suis* may create an Estate of Inheritance. *R.* 4 *Co.* 29. *b*, *Bunting.*

Or, *sibi & assignatis.* 4 *Co.* 29. *b.*

Or, *sibi & suis in Villenagio.* *Kit.* 102. *b.*

So, by Custom, a Surrender to three *successivé*, gives an Estate to them, one after the other. *Kit.* 103. *b.*

So a Husband may surrender to the Use of his Wife; for tho' she takes by the Surrenderor, yet it is *mediante Domino.* *R.* 4 *Co.* 29. *b*, *Bunting.* *Adm.* 1 *Rol.* 317.

So he may surrender to the Use of his Wife, Remainder to himself. *D.* 1 *Rol.* 317.

So, to the Use of *A.* and his Wife for Life, with a contingent Remainder to the Right Heirs of the Body of himself and his Wife. *R.* 1 *Rol.* 238, 317, 438.

So, by Custom, a *Feme Covert* may surrender to the Use of her Will, and devise to her Husband. *R.* 2 *Brow.* 218.

So a Man may surrender to such Use as the Lord shall name. *R. Lit.* 26.

So he may surrender to *A.* in Trust for *B.* *Adm. All.* 14.

And the Trust shall be executed in *Chancery.* *All.* 15.

But if *B.* is an Alien, the King shall have the Trust. *Semb. All.* 15.

Yet the King cannot seise it without a Decree. *Semb. All.* 16.

(F 9.) To the Use of a Will.

A Copyhold does not pass by Devise, without a Surrender, but it ought to be surrendered to the Use of the last Will and Testament. 4 *Co.* 24. *b.*

And therefore, if the Lord grants the Inheritance of a Copyhold, the Copyholder cannot devise; for the Grantee cannot take a Surrender. *R.* 4 *Co.* 24. *b*, *Murrel.*

But a Devisee takes by the Surrender, not by the Will, which is only declaratory of the Uses. *R.* 1 *Bul.* 200. *R.* 2 *Cro.* 199. *D.* 2 *Rol.* 383.

And therefore, if there be Joint-tenants of a Copyhold, and one surrenders to the Use of his Will, and devises to *A.* in Fee, and dies; *A.* takes, for by the Surrender the Jointure was severed. *Co. L.* 59. *b.* 2 *Rol.* 383.

If a Copyholder ſurrenders to the Uſe of his Will, and deviſes to *A.* for Life, and that he ſhall name two, who ſhall ſell; *A.* has not a Fee, but only an Authority to name two Vendors, and the Vendee ſhall be in by the Will, without a new Surrender. *R.* 2 *Cro.* 199.

If he ſurrenders to the Uſe of a Will, which he ſhall leave with *A.* It is good as to his Will, tho' it is not left with *A.* if he dies before the Deviſor. *R. Lit.* 26.

So, tho' *A.* does not die in the Life of the Deviſor. *Dub. Lit.* 26.

So a Cuſtom that a *Feme Covert* may ſurrender to the Uſe of her Will, and by her Teſtament deviſe, is good tho' ſhe deviſes to her Huſband. *R.* 2 *Brow.* 218. 3 *Leo.* 81. *Vide Godb.* 14, 143.

When a Copyholder ſurrenders to the Uſe of his Will, it remains in the Copyholder, and not in the Lord. *R.* 4 *Co.* 23. *Cro. El.* 442, 349.

And if the Copyholder does not afterwards make his Will, but ſurrenders to *A.* and his Heirs, the Surrender to *A.* is good. *R. Cro. El.* 442.

So, if he does not make a Will, nor a laſt Surrender, the Copyhold deſcends to his Heir. *Cro. El.* 442.

So, if he makes a Will and deviſes for Life or in Tail, all the Eſtate not deviſed deſcends to the Heir. *R. Cro. El.* 148. 1 *Leo.* 174.

But if a Copyholder by Will deviſes to his Wife for Life, and that ſhe ſhall ſell the Reverſion, and afterwards ſurrenders to his Wife for Life, according to his Will; ſhe may ſell. *R. Cro. El.* 68.

If he deviſes Part of his Copyhold to his Wife, and afterwards ſurrenders the Whole to the Uſe of his Will; this does not enlarge the Deviſe. *R.* 3 *Leo.* 18.

A Cuſtom that a Teſtament ſhall be preſented at the next Court, otherwiſe that it ſhall be void, is good.

So, that it ſhall be preſented within a Year and a Day. *R. Cart.* 72, 86.

And upon ſuch Cuſtom, if the Teſtament is not preſented by the Deviſee for Life, it is void as to him in Remainder. *Semb. Cart.* 73, 86.

Tho' Deviſee be an Infant. *Semb. Cart.* 86.

(F. 10.) Preſentment of a Surrender.

By Surrender the Copyhold Eſtate paſſes to the Lord (being made out of Court) upon a tacit Condition, that it be preſented at the next Court, according to the Cuſtom of the Manor. *Co. L.* 62. *a.*

And, if it be not preſented at the next Court, it is void. *Ibid.*

[By Special Cuſtom it may be preſented at any ſubſequent Court. *Moore* v. *Moore, T.* 1755. 2 *Vezey* 596.

And it may be preſented at the next Court, tho' the Surrenderor dies before. *R.* 4 *Co.* 29. *b, Bunting.* 1 *Rol.* 501. *l.* 30. *Co. L.* 62. *a.*

So a Surrender to two Tenants, *&c.* may be preſented at the next Court, tho' the Tenants die before, it being proved that there was ſuch a Surrender. 4 *Co.* 29. *b, Bunting.* *R.* 3 *Bul.* 216. 2 *Cro.* 403. 1 *Rol.* 501. *l.* 30.

Unleſs the Preſentment after the Tenant's Death be reſtrained by ſpecial Cuſtom. *D.* 3 *Bul.* 218.

The whole Surrender ought to be preſented; for if it was upon Condition, and the Condition is omitted, the whole Preſentment is void. *R.* 4 *Co.* 25, *Kite.*

But by ſpecial Cuſtom, that the Surrender be preſented within a Year, it is ſufficient, if it is preſented within the Year, tho' it be not at the next Court. *Adm.* 3 *Bul.* 215.

Or, that it be preſented at the next Court, or within a Year, or at the next Court after the Year. *Semb.* 5 *Co.* 84. *Cro. El.* 668.

So a Cuſtom, that the Preſentment be, of a Surrender to the Uſe of a Will, at the next Court after the Death of the Surrenderor, is good; tho' it be not at the next after the Surrender made. *Adm. per Holt at the Aſſizes,* 3 *Ann. inter Stint and Blount.* (*Vide Godb.* 143.)

So

So the Preſentment of a Surrender to the Uſe of a Will, at the next Court after the Death of the Surrenderor, tho' it be not the next after the Surrender made, is good, without a ſpecial Cuſtom. *Semb. by the general Expreſſions of Co. L.* 59. *b.* 1 *Rol.* 501. *l.* 35. *Per Wiſeman*, 28 *El. Per Lechmere, at the Aſſizes*, 4 *Jul.* 4 *W. & M. inter Carpender and Ilton, at Chelmsford. Dub. per Holt at the Aſſizes*, 3 *Ann. inter Stint and Blount.*

So a Surrender upon valuable Conſideration, if it be not preſented, ſhall be aided againſt a voluntary Diſpoſition to another. *R. Ca. Ch.* 171.

So an Agreement to ſell, or mortgage for Money, tho' there be no Surrender. *Ibid.*

(F. 11.) In whom the Eſtate is till Preſentment.

After a Surrender, the Eſtate remains in the Surrenderor till Preſentment. *R. Cro. El.* 349. *R.* 2 *Cro.* 403. 3 *Bul.* 218. *R. Cro. Car.* 283. 1 *Rol.* 502. *l.* 25.

And till Admittance. *D. Cro. El.* 349. *R. Cro. Car.* 283. *Adm.* 3 *Lev.* 385.

For nothing paſſes till Preſentment, or Admittance. 2 *Cro.* 403. 3 *Bul.* 238.

And if the Surrenderor dies before Admittance, it deſcends to his Heir. *R. Cro. El.* 349. *R.* 2 *Cro.* 403. 3 *Bul.* 217. *R. Cro. Car.* 283. *D.* 1 *Vent.* 261.

And the Surrenderor, before Preſentment of the firſt Surrender, may again ſurrender to another. *R. Cro. Car.* 283. 1 *Rol.* 500. *l.* 5. *Jon.* 306.

And if he ſurrenders to *A.* and his Heirs, and before Preſentment again ſurrenders to *A.* for Life, and at the next Court both Surrenders are preſented, and *A.* is admitted upon the ſecond, he ſhall have it only for Life. *R.* 1 *Rol.* 499. *l.* 55. *Lane* 99.

So, if a Copyholder ſurrenders to *A.* for Life, and afterwards to the Uſe of his Will; the Fee remains in the Surrenderor, and not in the Lord. *R.* 4 *Co.* 23. *a, Fitch. Cro. El.* 442, 349.

And the Surrenderor may afterwards ſurrender to another in Fee. 4 *Co.* 23. *a. Cro. El.* 442.

(F. 12.) When a Surrender may be revoked.

So a Surrenderor may revoke a Surrender made without valuable Conſideration, before Preſentment. *Kit.* 82. *Dub. per Holt*, 3 *Ann. inter Stint and Blount.*

So after Preſentment, before Admittance. *Kit.* 82.

And the Revocation may be by *Parol.*

(F. 13.) When not.

But a Surrender upon valuable Conſideration cannot be revoked. *Kit.* 82.

So, if a Copyholder makes a Surrender to *A.* and afterwards to *B.* and both are preſented at the next Court; *A.* ſhall be admitted. *R. Cro. Car.* 283. 1 *Rol.* 500. *l.* 10.

So, if *B.* was admitted upon the ſecond Surrender, and then the former Surrender to *A.* is preſented at the next Court, and *A.* is admitted; he ſhall avoid the Admittance of *B. Semb. Cro. Car.* 284. *cited ſo per Pollexfen. Pol.* 50.

So, if a Surrender be for a Mortgage, and before Preſentment the Surrenderor becomes Bankrupt; it ſhall be preferred to the Aſſignee of the Bankrupt. *Sal.* 449. (*Vide* 2 *Ver.* 564.)

Tho' the Surrender never was preſented, it ſhall be preferred in Equity; for it is a Lien upon the Land. *R. per Cowper, Sal.* 449.

And if the Surrender is preſented at the next Court, tho' there be no Admittance upon it, the Land is bound, ſo that all meſne Acts ſhall be avoided. *R. Cro. Car.* 284.

As, if a Copyholder, where, by Cuſtom, the Wife ſhall have Free-bench, ſurrenders to *A.* and the Surrender is preſented, and then he dies, and *A.* is afterwards admitted; he ſhall avoid the Free-bench, for his Admittance has Relation to the Surrender. *R.* 3 *Lev.* 385.

(F. 14.)

(F. 14.) How a Surrender operates.

[The ſame Conſtruction of Words muſt take Place as in other Law-conveyances; and the Intent of the Party is not ſufficient, as in a Will. *Suton* v. *Stone*, *M.* 1740. 2 *Atkyns* 101. *Lovel* v. *Lovel*, *M.* 1743. 3 *Atkyns* 11.]

[*A.* ſeized in Fee ſurrenders to the Uſe of *B.* his future Wife, and the Heirs of their two Bodies, for Default to the right Heirs of *A.* She takes Eſtate for Life with contingent Remainders to the Heirs of their two Bodies. *Frogmorton* v. *Wharrey*. *T.* 10 *G.* 3, and *M.* 11 *G.* 3. 3 *Wilſ.* 125 & 144.]

[Surrender is the Conveyance of the Ownerſhip of the Eſtate: Admiſſion only Form, and relates back to the Surrender. *Roe* v. *Griffits*. *M.* 7 *G.* 3. 4 *B. M.* 1952.]

Nothing paſſes by a Surrender, but what is ſufficient to ſupply the Uſe limited; and when the *Ceſtuy que Uſe* is admitted, he ſhall be in by the Surrenderor, not by the Lord. *Co. L.* 59. *b.*

And therefore, if a Copyholder ſurrenders for Life, or in Tail, the Fee remains in him. *D. Cro. El.* 442.

And if a Copyholder ſurrenders to *A.* for Life, nothing paſſes but what is ſufficient to ſupply the Eſtate for Life; and when *A.* dies, the Reverſioner ſhall have the Reverſion without any Fine for Re-admittance. *Per Ch. J.* 9 *Co.* 107. *a*, *M. Podger*. 1 *Rol.* 504. *l.* 8. *R. Cro. Car.* 205. *Per Wray*, 1 *Leo.* 175.

But if a Huſband, ſeiſed in Right of his Wife for Life, with Remainder over, ſurrenders to *A.* for Life, who dies in the Life of the Huſband; the Lord ſhall have it for the Life of the Huſband; for he has ſurrendred his whole Eſtate, and cannot have it again againſt his own Grant, and the Remainder he cannot have without a Grant to him. *Dy.* 264. *a.* 1 *Rol.* 504. *l.* 15.

So, if any Copyholder only for Life ſurrenders to *A.* generally, who dies after Admittance; the Lord ſhall have it during the Life of his Copyholder. *R.* 1 *Rol.* 504. *l.* 20. *Cro. Car.* 204. *Jon.* 229. 1 *Sal.* 188, 189. *Mod. Ca.* 68.

So, if a Copyholder for Life, with Remainder over in Fee, ſurrenders to *A. Cont. per North*, 1 *Mod.* 200. *Acc.* 2 *Rol.* 794. *l.* 35.

And if the Remainder be contingent, a Surrender by a Copyholder for Life to another in Fee, does not defeat the Remainder. *Semb.* 2 *Rol.* 794. *l.* 45. *Vide Ante*, (D. 1.)

When a Man ſurrenders to the Uſe of his Will, he has the whole Copyhold Intereſt in himſelf. *Vide Ante*, (F. 9.)

And therefore, if a Copyholder ſurrenders to the Uſe of himſelf for Life, and afterwards to his Son for Life, and afterwards to the Uſe of his Will, and does not make a Will, but afterwards ſurrenders to *A.* and his Heirs; the Surrender to *A.* is good. *R. Cro. El.* 442.

So, if he makes a Will and deviſes to *A.* for Life, and afterwards to *B.* in Tail, and ſays nothing of the Fee; it deſcends to the Heir. *R. Cro. El.* 148.

So, if a Copyholder ſurrenders to ſuch Uſe as the Lord ſhall name, who limits it to *A.* for Life; the Fee reſults to the Copyholder. *R. Lit.* 26.

If a Copyholder in Reverſion, or Remainder, expectant upon an Eſtate for Life, ſurrenders to him, who has it for Life, for his Life, and afterwards to himſelf and his Wife in Fee; this operates to them by way of a preſent Eſtate, and not as a Remainder. *R.* 1 *Sand.* 151. 1 *Sid.* 360.

If a Copyholder ſurrenders to himſelf for Life, and afterwards to *A.* in Tail, and afterwards to his own right Heirs; his Heir takes the Fee by Deſcent. 1 *Leo.* 101, 102.

But if he ſurrenders to *A.* for Life, and afterwards to his own right Heirs; his Heir takes by Purchaſe. *R.* 1 *Leo.* 102.

If a Surrender be to *A.* for Life, and afterwards to the Heirs of the Body of *A.* by her Huſband begotten; it is a Tail executed in *A.* *Per Coke*, 1 *Rol.* 239.

If it be to the Wife for Life, and afterwards to the right Heirs of the Huſband and Wife, and the Huſband enters; he ſhall be ſeiſed of a Moiety in Right of

of his Wife in Fee; for the Remainder will be executed for a Moiety. *R.* 3 *Leo.* 4.

[If *A.* ſurrenders Copyhold to his Brother *B.* till *C.* Son of *D.* Brother to *A.* attains twenty-one, and after ſuch Age to *C.* his Heirs and Aſſigns; and an Agreement is indorſed, that *B.* is to receive the Rents till *C.* attains twenty-one, and then to account to him for the ſame, but not before: And *A.* dies without Iſſue, *C.* dies an Infant without Iſſue, or Brother or Siſter born at his Death, and *B.* is Heir at Law to *A.* and *C.* and dies; the Heir at Law of *B.* ſhall take the Premiſſes, and ſhall not account for the Profits. *Lovel* v. *Lovel*, *M.* 1743. 3 *Atkyns* 11.]

(G.) Admittance.

(G. 1.) What may be done before Admittance.

THE Heir may take the Profits, have Treſpaſs, Surrender, *&c.* before Admittance. *Vide Ante*, (D. 2.)

The Aſſignee of a Copyhold, upon the Statute of Bankrupts, has an Eſtate in him before Admittance. *R. Cro. Car.* 569. *Jon.* 451, 2.

And he ſhall avoid all meſne Acts, between the Aſſignment and Admittance, for when he is admitted, it has Relation to the Bargain and Sale; and therefore, if the Bankrupt afterwards dies, and his Wife is admitted, the Aſſignee after Admittance ſhall avoid it. *R. Cro. Car.* 569.

But by the *St.* 13 *El.* 7. *S.* 3. Aſſignee of a Copyhold ſhall not enter or take the Profits, till he hath agreed with the Lord for his Fine, who at the next Court ſhall admit him Tenant.

If, by Cuſtom, the Wife has Free-bench, ſhe ſhall enter and leaſe for a Year, before Admittance. *Hob.* 181. *R.* 1 *Rol.* 502. *l.* 10.

So, if the Lord refuſes Admittance, the Copyholder ſhall have all Actions, as if he was admitted. *Per* 2 *J. Hob.* 181.

But a Surrenderee cannot enter and take the Profits, before Admittance. *R. Cro. El.* 349.

Nor, after Preſentment of a Surrender to him. *Per* 2 *J. Poph.* 128.

Nor have an Action. *Cro. El.* 349.

Nor make a Surrender. *R. Yel.* 145. *Per* 2 *J. Poph.* 128. *R.* 1 *Brow.* 143.

Nor ſhall he be ſworn on the Homage. *Kit.* 87. *b.*

Tho' a Surrender be by a Copyholder to his youngeſt Son, he can do nothing before Admittance. *R. Lane* 20.

So, where there is a Cuſtom of *Borough Engliſh*, if the Father ſurrenders to him and his Heirs and dies, and the youngeſt Son enters; the eldeſt Son cannot enter, before Admittance. *R.* 1 *Rol.* 502. *l.* 20.

So, where by Cuſtom a Copyholder for Life ſhall name his Succeſſor, the Nominee cannot enter, before Admittance. *Per Coke*, 2 *Bul.* 338.

So, by Cuſtom, the Surrenderee ſhall not be admitted till Proclamation that the next of Blood, or he who has Land adjoining Eaſtward, comes, and he pays all that the Surrenderee ſwears he ought to pay with his Coſts, he ſhall be admitted, and not the Surrenderee. *Kit.* 102. *b.*

Yet if the Steward refuſes to admit a Surrenderee, he may enter and plead, in Defence of his Title, to the Ejectment by the Lord, without Admittance; for the Lord is Party to the Wrong. *Semb. Per* 4 *J. Yel.* 16. *R. Hob.* 181.

(G. 2.) When neceſſary.

Every Copyholder ought to be admitted Tenant to his Copyhold. *Pl. Com.* 529. *b.*

But till Preſentment of the Death, and Proclamation thereupon, the Heir need not be admitted. 1 *Leo.* 100. 3 *Leo.* 221.

And if the Heir upon Proclamation does not come to be admitted, the Lord may ſeiſe *quouſq*; he comes, without a ſpecial Cuſtom. *D.* 1 *Lev.* 63.

[If Copyhold ſurrendered to the Uſe of Will is deviſed to ſix Perſons, and one offers himſelf to be admitted, and the Lord refuſes, he cannot ſeize *quouſque*; he ſhould admit him, and then proceed for his whole Fine. *Roe* v. *Hutton*, *P.* 3 *G.* 3. 2 *Wilſ.* 162.]

And, by ſpecial Cuſtom, if he comes not after three Proclamations, at three ſeveral Courts, the Lord may ſeize it as forfeited. *Adm.* 8 *Co.* 99.

But not without ſuch Cuſtom. *R.* 1 *Lev.* 63.

Or, if he does not come within a Year and a Day. *Pl. Com.* 372. *a.*

So a Cuſtom, that he to whoſe Uſe a Surrender is made ſhall come to be admitted after three Proclamations, otherwiſe his Land ſhall be forfeited, is good. *R.* 1 *Rol.* 568. *l.* 20. *Noy* 42. *Adm.* 3 *Mod.* 221.

Yet the Proclamation ought to be, that he come to be admitted to ſuch Copyhold, ſpecially named; for it is not ſufficient that he come to be admitted, generally. *Dub.* 1 *Lev.* 63.

But a Cuſtom to ſeize as forfeited, for not claiming to be admitted, does not bind the Heir, if he was beyond Sea, *Non Compos*, or in Priſon at the Time. *R.* 8 *Co.* 100. 2 *Cro.* 226. *Per* 3 *J.* 2 *Cro.* 101. *R. Godb.* 268.

Or, if he was an Infant. *R.* 8 *Co.* 100. 1 *Leo.* 100. *R.* 3 *Leo.* 221. *Per* 4 *J. Coke cont.* 2 *Cro.* 226. *R. in C. B. and affirmed by* 3 *J. in Error*, 3 *Mod.* 223. *Sho.* 31. 1 *Sal.* 386. *Carth.* 44.

But he may forfeit *quouſq*; he be admitted, tho' an Infant. *Per Williams*, 2 *Cro.* 226. *Per Holt and admitted per Eyre, if there be a ſpecial Cuſtom for it, but Dolbin cont.* 3 *Mod.* 223. 1 *Sal.* 386.

And if he be within the Realm at the Time of the Deſcent, tho' he goes out before Proclamation, he ſhall forfeit. *Adm.* 2 *Cro.* 101.

[If a Copyhold is granted for a Term of Years, (tho' in Truſt for others) the Executor of the Termor is obliged to be admitted, and the Lord is intitled to a Fine. *E. Bath* v. *Abney*, *H.* 30 *G.* 2. 1 *B. M.* 206.]

(G. 3.) When not.

If a Copyholder ſurrenders to *A.* for Life, who dies, he ſhall have it again without Re-admittance. *Vide Ante*, (F. 14.)

So, if a Copyholder makes a Leaſe for Years by Licence, and the Leſſee dies, his Executor needs no Admittance. *R. Mo.* 128.

So, if there be a Copyholder for Years who dies, his Executor needs no Admittance. *R. Mo.* 128. *D.* 1 *Leo.* 4.

So, if Huſband be admitted with his Wife, where by Cuſtom he ſhall be Tenant by the Curteſy; if the Wife dies, the Huſband need not be re-admitted. 1 *Leo.* 4.

So the Admittance of Tenant for Life, is an Admiſſion of him in Remainder; ſo that the Lord does not loſe his Fine. 4 *Co.* 22. *b, Brown. R.* 4 *Co.* 23. *a, Fitch. Cro. El.* 504, 662. *Dub.* 1 *Rol.* 505. *Y. R. Mo.* 358, 465. *R.* 2 *Cro.* 31. *R.* 1 *Vent.* 260.

So the Admittance of a Copyholder for Years, is an Admittance of him in Remainder, after the Years. *R.* 1 *Vent.* 260. *R.* 1 *Mod.* 120.

(G. 4.) What ſhall be an Admittance.

Any Words, which ſhew that the Lord accepts him for his Tenant, are ſufficient.

So, if the Lord, having Notice of a Surrender, accepts Rent of the Surrenderee, it is an Admittance in Law. *R.* 1 *Rol.* 505. *l.* 26.

Tho' the Acceptance be out of Court. 1 *Rol.* 505. *l.* 27.

But it is neceſſary, that the Surrender be preſented before the Acceptance. *R.* 2 *Cro.* 403. 3 *Bul.* 219.

So, if a Surrenderee at another Court makes a Surrender in Court; for the Allowance by the Lord to make a Surrender, amounts to an Admittance. *Dub.* 38 *El. R.* 41 *El.* 1 *Rol.* 505. *l.* 20. *Dub.* 3 *Bul.* 240.

But there ought to be an expreſs Acceptance of a certain Perſon which amounts to an Admittance; for if a Surrenderee, before his Admittance, ſurrenders to *A.* who is admitted, it does not amount to an Admittance of the Surrenderee. *R. Yel.* 145. 1 *Brow.* 143.

So, if a Surrender be to the Uſe of *B.* and the Steward inrols it, and gives him a Copy of it without more, it is no Admittance; for it ought to be an Act done. *R. Bridg.* 82. *Poph.* 127.

(G. 5.) When it ſhall be.

The Lord may admit before a Surrender is preſented. *R.* 1 *Rol.* 502. *l.* 30.

But the Heir is not bound to be admitted till the Death of his Anceſtor is preſented, and Proclamation made for his Admittance. 4 *Leo.* 31.

(G. 6.) By whom it ſhall be.

Every Lord having Poſſeſſion of a Manor by Right, or by Wrong, may make Admittances. *Vide Ante,* (C. 3, 4.)

And every Steward having Colour of Authority. *Vide Ante,* (C. 5.)

(G. 7.) In what Place.

The Lord may make an Admittance in Court.

Or, at any Place out of Court, and out of the Manor. *R.* 4 *Co.* 26. *b.*

So the Steward may make an Admittance out of Court, at any Place within the Manor, as well as in Court. 1 *Rol.* 505. *l.* 15.

But not out of the Manor. *R.* 4 *Co.* 26. *b.*

Unleſs where, by Cuſtom, the Court has been held out of the Manor. *Cro. Car.* 367. *Vide Poſt,* (R. 4.)

(G. 8.) By Attorney.

The Lord may admit a Copyholder by Attorney, as well as in Perſon. *R.* 9 *Co.* 76. 1 *Rol.* 505. *l.* 5, 10.

But the Lord may refuſe to admit by Attorney; becauſe his Tenant ought to do Fealty, which he cannot by Attorney. 9 *Co.* 76. 1 *Rol.* 505. *l.* 5.

(G. 9.) How it ſhall be made.

An Admittance ought to be purſuant to the Surrender; for the Lord is only an Inſtrument, and the Surrenderee, when admitted, is in by the Surrenderor. *R.* 4 *Co.* 27. *b, Taverner.* 4 *Co.* 28. *b, Weſtwick.*

And therefore, if a Surrender be to *A.* for Life, and he is admitted to him and his Heirs; he has it only for Life, the Reverſion being in the Surrenderor. *R.* 4 *Co.* 29. *b, Bunting.* *R.* 1 *Rol.* 504. *l.* 2.

If a Surrender be to *A.* and *A.* and his Wife are admitted, it is void to the Wife, without a ſpecial Cuſtom. *R.* 4 *Co.* 28. *b, Weſtwick.*

So, if a Surrender be to *A.* and he and a Stranger are admitted; it is void to the Stranger, and the Whole veſts in *A.* 4 *Co.* 28. *b.*

So, if a Surrender be to *A.* and *B.* for Life, Remainder to the Heirs of the Body of *B.* and the Surrenderor, and *A.* and *B.* are admitted in Fee; they have it only for Life. *R.* 1 *Rol.* 438.

So, if a Surrender is abſolute, and the Admittance upon Condition; he has it abſolutely. 4 *Co.* 28. *b.*

So, if a Surrender is of ſuch and ſuch Copyholds, and the Admittance is to all Copyholds of the Surrenderor; nothing veſts but the Particulars mentioned in the Surrender. *R. Dy.* 251. *b.* 1 *Rol.* 504. *l.* 45.

So, if a Surrender be to *A.* and his Heirs; and *A.* dies before Admittance; the Lord may admit the Heir. 1 *Rol.* 504. *l.* 40.

So,

So, if a Surrender be to *A.* Remainder to *B.* and *A.* dies before Preſentment of the Surrender; *B.* ſhall be admitted. *R. Dy.* 251. *a.* 1 *Rol.* 504. *l.* 35.

So, if a Surrender be to *A.* for Years, Remainder to his right Heirs; the Admittance of *A.* will be the Admittance of the Heir, ſo that if he dies, ſuch Admittance of the Heir makes a *poſſeſſio fratris*. *R.* 2 *Lev.* 107.

(G. 10.) The Lord compellable to admit.

If the Lord refuſes to admit, he ſhall be compelled in *Chancery*. *R.* 2 *Cro.* 368. *Per Dodd*, 2 *Rol.* 274.

So, if a Surrender be to the Lord, who is *Dominus pro tempore*, and then his Intereſt determines; the Lord *paramount* ſhall be compelled to make an Admittance thereupon: *Co. L.* 59. *b.*

But an Action upon the Caſe does not lie againſt the Lord, if he refuſes to admit; for there is no Remedy but in Equity. *R.* 2 *Cro.* 368. 1 *Rol.* 108. *l.* 20, 30. 2 *Bul.* 337.

So, if by Cuſtom, the Lord ought to admit to a Copyhold whom the Copyholder names for his Succeſſor, and the Lord refuſes, an Action upon the Caſe does not lie. *R. Mo.* 842. *R.* 2 *Cro.* 368. 2 *Bul.* 337. 1 *Rol.* 125, 195.

(G. 11.) Of what Effect it ſhall be.

If a Man be admitted to a Copyhold upon a void Preſentment, he has thereby the Cuſtomary Eſtate and Title to the Poſſeſſion, and is capable of a Releaſe from him who has the Right. *R.* 4 *Co.* 25, *Kite.* 1 *Rol.* 504. *l.* 50.

But if he enters upon a Copyhold of a Manor in the Hands of the King, he has no Intereſt, but Poſſeſſion againſt a Stranger. *R.* 3 *Leo.* 221.

So, if a Copyholder in Remainder enters upon a Copyholder for Life, he has not the Cuſtomary Intereſt for Life, but is a Diſſeiſor; and if he afterwards ſurrenders, it avails nothing. *R.* 1 *Mod.* 199.

If a Copyholder leaſes for Years, and afterwards ſurrenders two Parts of the Reverſion, the Surrenderee, being admitted, ſhall diſtrain for two Parts of the Rent, without Attornment or Notice; for the Surrender is notorious. *R. Ray.* 18. *R. Hob.* 177.

(H) Fine.

(H. 1.) When due.

BY Cuſtom, a Fine ſhall be paid to the Lord upon every Alteration of his Tenant: And therefore, if a Copyholder in Fee dies, a Fine is due to the Lord upon Admittance of the Heir. *Co. L.* 59. *b.* *Kit.* 122. *a.*

And if the Heir dies before Admittance, it ſhall not prejudice the Lord as to his Fine.

Or, if he ſurrenders before Admittance. 4 *Co.* 22. *b.*

[But if Copyholder ſurrenders to the Uſe of his Will, and by Will orders and directs two Truſtees to make Sale of his Copyhold, and apply the Money to certain Purpoſes; they may ſell without being admitted, and the Lord ſhall admit the Vendee, and have but one Fine. *Holder* v. *Preſton*, *P.* 9 *G.* 3. 2 *Wilſ.* 400.]

So, if a Copyholder makes a Surrender, a Fine is due upon Admittance of the Surrenderee. *Co. L.* 59. *b.* *Kit.* 122. *a.*

So, if a Wife, by Cuſtom, has the Whole or Part of a Copyhold for her Dower; upon her Admiſſion a Fine ſhall be paid. *Kit.* 123. *a.*

But half a Fine is commonly taken; but that is according to the Cuſtom of the Manor. *Ibid.*

So, if a Surrender be to *A.* by way of Mortgage upon Condition; after the Condition broken, the Lord ſhall compel *A.* to be admitted, and pay a Fine, tho' *A.* will renew the Surrender. *Dub.* 2 *Ver.* 367, 8.

So, if a Surrender be to *A.* for Life, and afterwards to *B.* for Life, and afterwards to *C.* in Fee, a Fine is due for them in Remainder; for tho' the Admittance of *A.* is an Admittance of them in Remainder, yet it ſhall not prejudice the Lord for his Fine. *D.* 4 *Co.* 22, *Brown. R.* 4 *Co.* 23, *Fitch. Cont. per Poph.* 1 *Rol.* 505. *l.* 50. *R. Cont. Mo.* 358, 465. *D. acc.* 1 *Vent.* 260. *Per Kit. acc. but others Cont. Kit.* 122. *b. R.* 1 *Mod.* 120.

And the Lord may ſet a Fine for the particular Eſtate, and another for the Remainder. *D.* 1 *Vent.* 260.

But there ought to be a ſpecial Cuſtom, otherwiſe a Fine is not due for a Remainder. *Per* 2 *J.* 3 *Lev.* 308. *Per* 2 *J. Cro. El.* 504.

And if another Fine is ſet for a Remainder, it is only half. *Kit.* 122. *b.*

And it need not be paid till the Remainder comes into Poſſeſſion. *Per Wild,* 1 *Vent.* 260.

If a Copyhold be granted to *A.* for Years, who dies during the Term; the Executor ſhall be admitted, and pay a Fine. *Per Weſton, others cont.* 3 *Leo.* 9.

So, by Cuſtom, a Fine may be due upon the Death of the Lord. *Co. L.* 59. *b.*

But not upon the Alienation of the Lord; for that would be unreaſonable. *Ibid.*

[In a Manor where by Cuſtom a general Fine is due from all the Tenants, on the Death of the laſt admitting Lord; Huſband Tenant for Life by Virtue of Marriage-ſettlement is intitled to the Fines on the Death of his Wife, the laſt admitting Lady. *D. Somerſet* v. *France, M.* 12 *G. Str.* 654. *Fort.* 41.]

But if two or three are admitted together, one Fine only is due; for they make but one Tenant. *Kit.* 122. *a.*

So, if a Surrender be to Huſband and Wife, and the Heirs of the Huſband, there is but one Fine due upon Admittance of the Huſband and Wife. *Ibid.*

So, if a Copyholder ſurrenders to himſelf for Life, and afterwards to *B.* and his Heirs, and dies before the next Court; *B.* ſhall pay but one Fine upon his Admittance. *Kit.* 122. *b.*

So, upon a Common Recovery, there ſhall be but one Fine paid; for the Recoverors are in in the *Poſt,* and pay no Fine. *Ibid.*

So, if a Copyholder for Life and he in Reverſion, or Remainder, join in a Surrender, the Surrenderee ſhall pay but one Fine. *Kit.* 123. *a.*

So, if there be no new Tenant, no Fine ſhall be paid: And therefore, if a Copyholder ſurrenders to *A.* for Life, who dies; the Surrenderor ſhall pay no Fine to be re-admitted. 9 *Co.* 107. 1 *Rol.* 505. *l.* 45.

So, if one Jointenant dies, the Survivor ſhall have the Whole, without paying any Fine to be admitted. *Kit.* 122. *a.*

So, if a Surrender be upon Condition, and the Surrenderor enters for the Condition broken; he ſhall not pay any Fine. *Kit.* 123. *a.*

If a Woman has a Copyhold for the Nonage of her Son, and takes a Huſband, and dies before her Son is of full Age; the Husband ſhall have it without a new Fine. *Per* 2 *J.* 3 *Leo.* 9.

(H. 2.) When to be ſet, and how.

No Fine ſhall be impoſed till Admittance. 1 *Rol.* 506. *A.* for the Admittance is the Cauſe of the Fine. *R.* 4 *Co.* 28. *a, Hubbard. D.* 1 *Vent.* 260.

If a Copyholder holds ſeveral Copyholds, by ſeveral Services, there ought to be upon every one a ſeveral Fine. *R.* 4 *Co.* 27, 8, *Hubbard.* for he may pay one and forfeit for the other. *Ibid. Cro. El.* 779. *Mo.* 622.

So, if all the ſeveral Copyholds are ſurrendered to one *tenend' per antiqua Servitia*; for the Tenures remain ſeveral, and the Fines ought to be ſeveral. *R.* 4 *Co.* 28. *a, Hubbard.*

(H. 3.) Fine certain.

A Fine may be certain, by Cuſtom. *Co. L.* 59. *b.*

If the Cuſtom allows for a Fine a Year's Value of the Land, it is good; for the Value is ſufficiently certain, and triable by a Jury. *R.* 3 *Lev.* 255. 3 *Mod.* 133. *Carth.* 13.

So a Fine of one Penny for 100 Acres or more, is good. *Kit.* 103. *a.*

So 6 *s.* 8 *d.* for every Meſſuage, Cottage, or Toft, or, every Acre of Land, tho' as much be paid for one as the other. *Kit.* 103, *a.*

So a Fine at the Will of the Lord for the firſt Purchaſe, and nothing afterwards. *Kit.* 103. *b.*

If the Lord demands a Fine certain, it is no Evidence of its Incertainty, that he has paid leſs; for the Lord may take a leſs Sum. *D.* 2 *Bul.* 32. *D. Cont. per Richardſon, Lit.* 252.

Otherwiſe, if he has paid more. *D.* 2 *Bul.* 32.

If a Jury find a Fine certain, *Chancery* will decree it to be an uncertain Fine upon Examination of the Rolls. *D. Lit.* 252.

If a Fine certain hath been paid from the Time of *H.* 6. and it appears by the Roll to have been uncertain before; it is not a Fine certain. *Godb.* 265.

A Fine certain ought to be paid immediately. 4 *Co.* 28. *a, Hubbard. Cro. El.* 779. *Mo.* 623.

(H. 4.) Fine uncertain.

So ſometimes a Fine, by Cuſtom, is uncertain, and arbitrary. *Co. L.* 59. *b.*

Or, by Cuſtom, may be aſſeſſed by the Homage, where the Lord does not agree. *Noy* 2, 3.

But tho' it is uncertain, it ought to be reaſonable; otherwiſe the Copyholder is not compellable to pay it. *Co. L.* 59. *b.* *R.* 4 *Co.* 27. *b, Hubbard.* 1 *Rol.* 507. *l.* 25. *R. Mo.* 622. *Cro. El.* 779. *R. Co. Ent.* 647. *c.*

Whether a Fine be reaſonable, or not, ſhall be determined by the Juſtices upon the Circumſtances appearing in the Caſe. *Co. L.* 59. *b.* *R.* 4 *Co.* 27. *b, Hubbard. Mo.* 623.

And therefore, if an Action be brought againſt a Copyholder by the Lord, it ſhall be referred to the Court upon Demurrer. 4 *Co.* 27. *a.* *Co. Ent.* 647. *c.*

Or the Defendant may plead, Not guilty, and upon Proof of the Value of the Land, and other Evidence, the Court will judge. 4 *Co.* 27. *a.* *Hob.* 135. *Co. Ent.* 647. *c.*

For, if a Copyholder prays a Mitigation, it does not conclude him, but that he may afterwards inſiſt on the Unreaſonableneſs of the Fine. 1 *Rol.* 507. *l.* 30.

And there may be a Cuſtom, that if the Lord and Surrenderee do not agree for the Fine, the Tenants ought to aſſeſs it. *R.* 1 *Rol.* 48.

Yet if a Copyholder brings Treſpaſs againſt his Lord, who juſtifies his Entry for Non-payment of a Fine; it ought to be ſhown on the Part of the Copyholder, that it is unreaſonable. *R. Hob.* 135.

If the Lord demands 5 *l.* upon Admittance to a Copyholder of 30 *s. per Ann.* it is unreaſonable. *R.* 1 *Rol.* 75.

So, if he demands for an Admittance upon a Deſcent, above two Years Value. *Semb.* 2 *Mod.* 230. But two Years Value is reaſonable. *R. Ch. R.* 464. *Adm.* 2 *Bul.* 32.

So, if he demands two Years and a half Rent for an Admittance upon a Surrender; for one Year and a half is ſufficient. *R. Cro. Car.* 196.

Or, the Value of two Years for an Admittance upon a Surrender. *R. Co. Ent* 647. *c.*

[Fines ſhall be ſet according to the preſent improved Value, not according to the Rent under a Leaſe then ſubſiſting by Licence of the Lord. *Halton* v. *Haſſel, P.* 9 *G.* 2. *Str.* 1042.]

[On Admiſſion to a Manſion-houſe then unlet, (and which had continued unlet for eighteen Years, when Action was brought) and a Piece of Land let at 7 *l. per*

per Annum; 150 *l.* being the Fine paid at the laſt Admiſſion, is not unreaſonable. *Evelyn* v. *Chicheſter*, *T.* 5 *G.* 3. 3 *B. M.* 1717.]

But, if by Cuſtom a Fine is only due on the firſt Purchaſe, and he and his Heirs pay no Fine for any Land purchaſed there afterwards; the Lord may ſet what Fine he pleaſes. *Kit.* 103. *b.*

(H. 5.) When it ſhall be paid.

A Copyholder need not pay an uncertain Fine immedately, for he cannot know how much it will be; and therefore, if the Lord does not limit a Time for Payment, he ſhall have a convenient Time. *R.* 4 *Co.* 27. *b*, *Hubbard*. *R. Cro. El.* 779. *Mo.* 622.

(H. 6.) Remedy for a Fine.

(H. 6.) By Action.

If a Copyholder refuſes Payment of the Fine, Debt lies againſt him. *Per* 2 *J.* 1 *Sid.* 58. *D. to be R.* 2 *Mod.* 230, 232. *Adm. and a Declaration there in Debt for Refuſal of ſuch Fine. Lut.* 597. *Cliff.* 244. *Vide Ent.* 176. *R. Per* 3 *J. Holt Cont.* 3 *Mod.* 240. 3 *Lev.* 261. *Sho.* 35. 2 *Vent.* 175.

So, by the Executor of the Lord. *Adm.* 3 *Lev.* 261.

So, an *Indeb. aſſumpſit*. *R.* 3 *Mod.* 240. 3 *Lev.* 262. *Per.* 3 *J. Holt Cont. Sho.* 35.

[If a Fine is aſſeſſed on Admiſſion of an Infant, *Aſſumpſit* would lie whilſt he is an Infant; (*Semb. per Yates* J.) but *certainly* after he comes of Age, and has renounced the Eſtate, but confirmed the Tranſaction by enjoying. *Evelyn* v. *Chicheſter*, *T.* 5 *G.* 3. 3 *B. M.* 1717.]

(H. 7.) By Seiſure as forfeited.

And Non-payment of a Fine apparently reaſonable, upon Demand, is a Forfeiture of the Copyhold. *R.* 1 *Rol.* 507. *l.* 20. *Vide Poſt*, (M. 4.)

Tho' he pretends, that he does not know what Fine is due, *&c.* if ſuch Pretence is merely groundleſs and covinous. *Semb. Ray* 42.

But if a Fine is unreaſonable, Refuſal of Payment is no Forfeiture. 1 *Rol.* 507. *l.* 25. *Vide Ante*, (H. 4.)

Or, if it was dubious, whether a Fine was reaſonable or not, tho' it was adjudged reaſonable. *D.* 1 *Rol.* 507. *l.* 35. *R. Ray* 42. 2 *Mod.* 231.

So, if it be dubious, whether a Fine is certain or uncertain; a Refuſal to pay an uncertain Fine, if he tenders the Fine certain, is no Forfeiture. *R.* 2 *Cro.* 617. *R. Ray.* 42. *Semb.* 2 *Mod.* 229.

Yet if a Day is appointed for Payment of the Fine, and he does not appear to excuſe his Default, tho' he tendered the Fine certain at the Time when it was aſſeſſed, it is a Forfeiture. *R.* 2 *Cro.* 617.

So, if it is dubious, whether a Fine he due or not, a Refuſal is no Forfeiture. *R.* 3 *Lev.* 309.

So it is no Forfeiture, if there was not a Demand from the Perſon of the Copyholder at the Time limited for Payment of the Fine, or afterwards. *R. Hob.* 135. *Semb. Ray.* 42. *Cont. Co. Ent.* 647. *d. Acc.* 2 *Mod.* 229.

And if the Lord juſtifies in Treſpaſs for Non-payment of the Fine, he ought to ſhew a Demand. *R. Hob.* 135.

But the Demand may be by the Steward, without Authority in Writing. *R.* 2 *Mod.* 229.

So, it is no Forfeiture, if there was not an expreſs Refuſal. *Co. Ent.* 647. *Vide Poſt*, (M. 4.)

Or, if he refuſes before the Time appointed for Payment, if he pays at the Time. *Co. Ent.* 647. *d.*

Entry for a Forfeiture ought to be by the Lord, or another to his Uſe.

But an Entry may be without Precept from the Steward. *R.* 2 *Mod.* 229.

(I. 1.) A Copyholder ſhall alien only by Surrender.

A Copyholder has no other Evidence for his Tenements, but a Copy of the Court Roll. *Lit. S.* 75.

And therefore he cannot alien by Deed.

Nor

Nor by Will, without a Surrender to the Uſe of his Will. *Vide Ante*, (F. 9.)

Unleſs there be a ſpecial Cuſtom, that he may deviſe without a Surrender; for then it ſhall be good. *R. Lit.* 26. *Adm. Cart.* 71.

So, if a Copyholder be ouſted by Diſſeiſin, he cannot releaſe by Deed to the Diſſeiſor; for he has not the Cuſtomary Eſtate upon which a Releaſe may enure, and it would be a Prejudice to the Lord, who would loſe his Fines and Services. *R.* 4 *Co.* 25. *b*, *Kite*. *R.* 1 *Leo.* 102.

But, if a Man be admitted to a Copyhold upon a void Surrender; he, who has Right, may releaſe his Right by Deed, and by this Releaſe his Right is extinct. *R.* 4 *Co.* 25, *Kite*. *Co. L.* 60. *a*.

So, if a Copyholder ſurrender upon Condition, he may afterwards releaſe the Condition by Deed; for it cannot paſs by Surrender. *R.* 2 *Cro.* 36. *Vide* 4 *Co.* 25, *Kite*.

So, if a Lord grants the Inheritance of a Copyhold to *A.* the Copyholder may releaſe by Deed to *A.* and thereby extinguiſh his Cuſtomary Intereſt. *R.* 1 *Leo.* 102.

So, if *A.* and *B.* are admitted to a Copyhold jointly, one of them may paſs his Eſtate, by Releaſe, to his Companion. *R. Winch* 3.

So a Copyholder may ſell or releaſe his Copyhold to the Lord, by Deed. *R. Hutt.* 65. *Vide Poſt*, (L.)

(I. 2.) But a Defect of the Roll ſhall be amended.

If there be an Omiſſion in an Entry upon the Roll, upon Proof the Roll ſhall be amended; for the Roll does not conclude the Copyholder to plead, or give in Evidence the Truth of the Matter. *R.* 4 *Co.* 25, *Kite*.

And therefore, if a Surrender upon Condition be preſented, and the Condition is not entred upon the Roll, it is not void; but the Roll ſhall be amended. *Ibid.*

So, if the Day of the Court be miſ-entred upon the Roll, it ſhall be amended upon Evidence, and ſhall not prejudice. *R.* 1 *Leo.* 290.

(K.) What a Copyholder ſhall do, by Cuſtom.

(K. 1.) Shall be Tenant by the Curteſy.

WHAT a Copyholder may, or ought to do, and what not, the Cuſtom directs. *Co. L.* 63. *a*.

And therefore, by ſpecial Cuſtom, the Husband may be Tenant by the Curteſy of a Copyhold, which he has in Right of his Wife. *Adm.* 2 *Leo.* 208. 1 *And.* 192.

But the Cuſtom ſhall be taken ſtrictly; and therefore, tho' the Husband of one, who had a Copyhold at the Time of the Marriage, ſhall be Tenant by the Curteſy, yet he ſhall not, if the Copyhold deſcends during Coverture. *R.* 2 *Leo.* 109, 208. [*Vide* 1 *P. W.* 69. *per* 2 *J. cont.*]

(K. 2.) Shall have Dower.

So, by ſpecial Cuſtom, the Wife may have all the Land of her Husband, after his Death for Dower, or Free-bench. 3 *Lev.* 385. *Lit. S.* 37.

[Free-bench is a Widow's Eſtate in ſuch Lands as the Huſband *dies ſeized of*; not that he is ſeized of during the Coverture, as Dower is. *Godwin* v. *Winſmore*, *H.* 1742. 2 *Atkyns* 525.]

[If a Man before Marriage ſettles on his Wife Part of his Real Eſtate for Jointure, in bar of all Dower which ſhe may claim out of any Lands, Tenements, Meſſuages and Hereditaments, of which he is or ſhall be ſeized, of Freehold or Inheritance; ſhe cannot claim her *Free-bench* in Copyholds purchaſed afterwards. *Walker* v. *Walker*, *M.* 1747. 1 *Vezey* 54.]

Or a Moiety, or third Part of his Land. *Co. L.* 33. *b.*
Or only the fourth Part of his Land. *Ibid.*
Or the Whole, or a Moiety, *dum ſola & caſta vixerit.* *Kit.* 105.
Or during her Widowhood. *Hob.* 181. *Noy* 2.
Or a Woman being eſpouſed when a Virgin, ſhall have all the Land whereof her Husband dies ſeiſed. *Kit.* 102. *a.*
Or, the Wife, by Cuſtom, ſhall have a third Part of the Rent of her Husband's Land, and not the Land itſelf for her Dower; as, at *Buſh.* *Kit.* 102. *b.*
So, by Cuſtom, the Wife ſurviving ſhall have the Fee, and the Husband *e converſo.* *Noy* 2.
And ſometimes the Wife, by Cuſtom, ſhall be admitted to her Dower, after the Death of her Husband, *Vide Kit.* 123. *a.*
And ſhall pay a Fine. *Vide Ante,* (H. 1.)
Sometimes ſhe ſhall have it without Admiſſion, as an Excreſcence from the Eſtate of her Husband. *Hob.* 181.
But a Cuſtom, that the Wife ſhall have Dower aſſigned by the Homage, without the Anſwer of the Terre-tenant, or a Plaint, or Proceſs againſt him, is ill. *Kit.* 103. *b.*
Or, that the Wife ſhall have Dower aſſigned of the Land, where the Husband, before Marriage, has made a Leaſe for Life, rendering Rent. *Kit.* 103. *b.*
When by Cuſtom, the Wife has Dower, ſhe ſhall have all Incidents; and therefore, ſhall recover Damages upon the *St. of Merton,* if her Husband dies ſeiſed. *R.* 4 *Co.* 30. *b, Shaw.* *Mo.* 410. *Cro. El.* 426.
But ſhe ſhall not have Debt for Damages given upon the *St. of Merton* in a Court Baron, except in the ſame Court, or in *Chancery.* 4 *Co.* 30. *b, Shaw. Yet Moor ſays, that three J. then held that Debt lies in B. R. for Damages aſſeſſed there above* 40*s.* *Mo.* 410, 411.
So ſhe ſhall not have Ejectment for a third Part of the Copyhold before it be aſſigned in Court. *Per Pemb.* 2 *Sho.* 184.
If the Husband purchaſes the Inheritance of his Copyhold, which is conveyed to *A.* for his Life, and afterwards to his right Heirs; the Dower of his Wife is not extinct, for the Cuſtomary Eſtate of the Husband remains for his Life, out of which the Dower is excreſcent. *R. Hob.* 181. 1 *Rol.* 510. *l.* 40. 2 *Cro.* 126, 573. 2 *Rol.* 179.
If the Wife be divorced *a Menſâ & Thoro,* yet ſhe ſhall have her Dower. *R. Hob.* 181.
But if the Husband makes a Leaſe for Years by Licence, the Wife after his Death ſhall not avoid it; for the Leſſee alſo is in by the Cuſtom. *R.* 2 *Cro.* 36. *Mo.* 758.
So, if the Huſband be a Bankrupt, and his Copyhold is ſold by the Commiſſioners, the Wife ſhall not have her Dower; for the Huſband did not die Tenant, (as he ought by the Cuſtom,) tho' the Bargainee was not admitted. *R. Cro. Car.* 569.
So, if the Huſband ſurrenders to *A.* and dies, and afterwards *A.* is admitted, the Wife ſhall not have her Dower; for upon Admittance *A.* ſhall be in from the Time of the Surrender. *R.* 3 *Lev.* 385. 1 *Sal.* 185. *Skin.* 406.
So, if the Husband, a Copyholder for Life, where, by Cuſtom, his Wife ſhall have Dower, takes a Leaſe for Years; the Copyhold is determined, and the Wife ſhall not have Dower. *R. Jon.* 462.

(K. 3.) Shall make Leaſes.

A Copyholder may make a Leaſe for one Year, without a Licence. *R.* 2 *Cro.* 403. 9 *Co.* 75. *b.*
And thereupon may maintain an Ejectment. *Mo.* 539, 569, 128. *Cont. Cro. El.* 483. *R.* 4 *Co.* 26, *Melwich. Vide Poſt,* (P. 3.)
And, by ſpecial Cuſtom, for three, nine, or twenty-one Years. *Kit.* 102. *b.*
Or, for Life, and forty Years after. *Mo.* 8.

But a Cuſtom, that the Leaſe ſhall be void, if the Leſſor dies, is good. *R. Lit.* 235. *Hut.* 101.

Otherwiſe, if the Leſſor alien. *Per* 2 *J. Lit.* 235. *Hut.* 101.

But a Leaſe for ſeveral Years, without Licence from the Lord, is not good without a ſpecial Cuſtom. *Per* 3 *J. Mo.* 272. *R.* 1 *Brow.* 133.

Tho' the Leaſe be made without Indenture, by *Parol.* 1 *Rol.* 507. *l.* 45. *Cro. El.* 499. *Mo.* 392.

Tho' it be not in Poſſeſſion, but commences *in futuro*. *R.* 1 *Rol.* 507. *l.* 45. *Cro. El.* 499. *Mo.* 392.

Tho' the Leaſe be for one Year *& ſic de Anno in Annum* for ten Years; for this is a Leaſe for ten Years. *R.* 2 *Cro.* 301, 308. *Vide Poſt*, (M. 2.)

Or, for a Year *& ſic de Anno in Annum*, during the Life of the Leſſor; for this is a Leaſe for two Years at leaſt. *R.* 1 *Rol.* 507. *l.* 55.

Or, *de Anno in Annum*, excepting one Day in every Year. *R.* 1 *Rol.* 508. *l.* 2. 1 *Bul.* 215. 2 *Cro.* 308.

So, if a Copyholder makes three Leaſes together each for one Year only, and each to commence 27 *M.* after the End of the former; it is not good, for it is only a Shift to evade the Cuſtom. *R.* 1 *Rol.* 508. *l.* 10. *Cro. Car.* 233. *Jon.* 249.

So, if a Copyholder covenants and agrees to make a Leaſe for ſeven Years, and ſo from ſeven Years to ſeven Years, for forty-nine Years; for this amounts to a preſent Leaſe. 2 *Mod.* 81.

So a Copyholder having Licence to leaſe, ought to purſue his Licence; otherwiſe his Leaſe is void. *R. Cro. El.* 395.

As, if he has a Licence to leaſe for two Years, and he leaſes for three Years. *Semb. Ow.* 73.

If he has a Licence to leaſe for twenty-one Years from *Mich.* laſt, and he leaſes for twenty-one Years from 25 *Dec.* next. *R. Cro. El.* 395.

If a Copyholder in Fee has a Licence to leaſe for Years, if he ſo long live, and he leaſes for Years abſolutely. *Semb. Cro. El.* (462.)

So a Copyholder having Licence to make a Leaſe for twenty-one Years, cannot make two Leaſes for that Term; for he has ſatisfied his Licence by one Leaſe. *R. Mo.* 184.

But a Cuſtom, that a Leſſee for Life ſhall make a Leaſe for the Life of another, is void. *R. Mo.* 8.

So a Leaſe by an Infant of a Copyhold ſhall be voidable. *Jon.* 157.

What Lord may grant a Licence, *Vide Ante*, (C. 3.)

When a Leaſe without Licence, not warranted by the Cuſtom, or not purſuant to the Licence, is a Forfeiture, *Vide Poſt*, (M. 2.)

But if a Copyholder makes a Leaſe by Licence, the Leſſee may aſſign without Licence. 1 *Rol.* 508. *l.* 28.

Or make an Under-leaſe; for the Lord by his Licence has parted with his Intereſt. *R.* 1 *Rol.* 508. *l.* 28.

So, if the Leſſor after a Leaſe by Licence, dies without Heir, the Leſſee ſhall have it for his Term againſt the Lord; for the Licence is a Confirmation of the Lord. *R. Hut.* 101, 2.

So a Leaſe without Licence is good, between Leſſor and Leſſee. *R. Ow.* 18. *Lat.* 199.

And if a Copyhold be to *A.* for Life, Remainder to *B.* in Fee, and *B.* makes a Leaſe for Years by *Parol*, and then *A.* and *B.* join in a Surrender to the Uſe of *B.* the Leaſe commences preſently. *R. Cro. El.* 160.

If the Lord licenſe his Copyholder to make a Leaſe of Lands in the Tenure of *A.* tho' they are in the Tenure of *B.* yet the Licence is good. *R.* 2 *Rol.* 52. *l.* 20.

If the Lord licenſe his Copyholder for Life to make a Leaſe for three Years, if he ſo long live; a Leaſe for three Years abſolutely, is good: For a Leaſe by a Copyholder for Life determines by his Death, and therefore the Condition annexed, being implied by Law, is void. *R. Ow.* 73. *Cro. El.* (462.) *Semb.* 2 *Cro.* 437. *Poph.* 105.

So, if he makes a Leaſe for fewer Years than his Licence allows. *R.* 2 *Cro.* 437. *R. Cro. El.* 535.

If the Lord licenſe upon Condition, the Condition is void; for he grants nothing, but only diſpenſes with the Forfeiture. *Per* 2 *J. Cro. El.* (462.) *Poph.* 106.

But a Licence may be upon a Condition precedent; for till the Condition is performed, it is no Licence. *Poph.* 106.

A Leaſe from the Huſband by Licence, ſhall not be avoided by the Wife, who claims Dower by Cuſtom; for the Leſſee is in under the Cuſtom. *R.* 2 *Cro.* 36.

So, if a Copyholder, after a Leaſe by Licence, forfeits his Copyhold; the Lord ſhall not avoid the Leaſe. *Semb. Hob.* 177.

Or, dies without an Heir. *R. Hut.* 101. *Vide ſupra.*

If a Copyholder by Licence makes a Leaſe for Years, rendring Rent, he cannot afterwards ſurrender the Rent without a Surrender of the Reverſion. 1 *Leo.* 315.

And if he grants the Rent, and the Leſſee attorns, the Grantee ſhall not have Debt for it; for he is not privy, nor has the Reverſion. *Semb.* 1 *Leo.* 315.

But the Grant is good as a Rent-ſeck. *Per Gawdy*, 1 *Leo.* 315.

A Leaſe without Licence, not warranted by the Cuſtom, is a Forfeiture. *Vide Poſt*, (M. 2.)

But makes no Diſſeiſin to the Lord. *Lat.* 199.

(K. 4.) Copyhold ſhall deſcend contrary to the Rules of the Common Law.

So, by Cuſtom, a Copyhold ſhall deſcend contrary to the Rules of the Common Law; as, by the Cuſtom of *Burrough Engliſh* to the youngeſt Son. *Kit.* 102. *a.*

Or, to the youngeſt Brother. *Ibid.*

Or, to the youngeſt Daughter. *Ibid.*

To the youngeſt Son or Daughter of the firſt Wife, ſhe being eſpouſed when a Virgin. *Kit.* 102. *a.* 1 *Ver.* 489.

So to the eldeſt Daughter only.

To the eldeſt Daughter for Life, and after her Death, to the next Heir Male of the Father, who derives his Deſcent by Males. *R.* 1 *Sid.* 367. 1 *Lev.* 172, 293.

And if, by Cuſtom, the Wife has Free-bench, and during her Eſtate the Eldeſt dies, the next Daughter, being eldeſt at the Death of her Mother, ſhall have it. *R.* 1 *Sid.* 267. 1 *Lev.* 172.

So, by Cuſtom, a Copyhold may deſcend to all the Males; as, in *Gavelkind*, at *Iſlington*. *Kit.* 102. *a.*

Or, to all the Brothers. *Ibid.*

Or, to all the Sons, if the Copyhold contains above five Acres; otherwiſe to the Youngeſt only. *Ibid.*

So, by Cuſtom, if a Man purchaſe *Bookland*, and *Bondland ſimul & ſemel*; it deſcends to the Eldeſt Son. 1 *Leo.* 56.

So, if he purchaſe *Bookland* firſt, and then *Bondland*, both deſcend to the eldeſt: But if he purchaſe *Bondland* firſt, both deſcend to the Youngeſt Son. *Ibid.*

So, by ſpecial Cuſtom, a Copyholder for Life ſhall name his Succeſſor. *R.* 1 *Rol.* 562. *l.* 5. *R.* 4 *Leo.* 238. 1 *Brow.* 132. Otherwiſe, the Lord ſhall have it. 1 *Sid.* 267.

So, by Cuſtom, after the Death of a Copyholder for Life, the Lord ought to admit his eldeſt Son for Life, and if he has no Son, his Daughter. *Adm. Mo.* 788.

[A ſingle Admittance at a Court Leet and Court Baron, is Evidence to prove the Cuſtom for Lands to deſcend to the youngeſt Nephew, tho' there is a Preſentment that the Cuſtom extends only to the youngeſt Son, and youngeſt Brother, and no farther. *Doe* v. *Maſon*, *P.* 10 *G.* 3. 3 *Wilſ.* 63.]

(K. 5.)

(K. 5.) The Lord ſhall appoint a Guardian.

So, by ſpecial Cuſtom, the Lord ſhall name Guardian to the Heir of his Copyholder, who is within Age, the next of Blood, to whom the Copyhold cannot deſcend. *Kit.* 103. *a.* *Vide Ante*, (E.)

Or, ſhall give the Cuſtody to his Bailiff, who ſhall render an Account to the Heir at his Age of fourteen Years. *Kit.* 103. *a.* *Dy.* 302. *b. in Marg.*

Or, otherwiſe ſhall diſpoſe of it according to the Cuſtom of the Manor. 3 *Lev.* 395.

As, by Cuſtom, the Lord may aſſign a Copyhold to any one, during the Infancy of the Tenant, without Account. *Semb.* 1 *Leo.* 266.

So, by Cuſtom, the Heir at the Age of fourteen Years may chuſe a Guardian for himſelf. *Kit.* 103. *a.*

But a Copyholder cannot diſpoſe of the Cuſtody, by his Teſtament within *St.* 12 *Car.* 2. 24. *R.* 3 *Lev.* 395. If there be a ſpecial Cuſtom, that the Lord ſhall aſſign a Guardian to his Infant Copyholder. *R. in the ſame Caſe*, *Lut.* 1190.

If the Lord, by Cuſtom, appoints a Guardian to his Copyholder, ſuch Guardian ſhall have Debt, *&c.* in his own Name, for Rent upon Leaſe of the Copyhold. *Dy.* 302. *b. in Marg.*

And ſhall have *Ejectione Cuſtodiæ*. *R. Cro. El.* 224. 1 *Leo.* 328. *Vide Poſt*, (P. 3.)

So, if a Copyholder be a Lunatic, the Lord, by ſpecial Cuſtom, may appoint a Guardian, or Committee of his Cuſtomary Lands. *Adm. Hob.* 215. *Hut.* 16.

So, if a Copyholder be an Ideot; for the King ſhall not have the Cuſtody of his Copyholds, tho' *St. Prærog. Regis* gives to the King the Cuſtody of all his Lands. 4 *Co.* 126. *Hard.* 434. *R. Dy.* 302. *b.*

Or, *ſurdus & mutus*. *R.* 2 *Cro.* 105.

And the Committee ſhall hold againſt the *prochein Amy* of the Copyholder. *Ibid.*

But ſuch Committee ſhall not ſue in his own Name, but in the Name of the Lunatic. *R. Hut.* 16. *Hob.* 215.

(K. 6.) Copyholder ſhall have Common.

So, by ſpecial Cuſtom, a Copyholder ſhall have Common within the Waſte of the Lord. 4 *Co.* 32. *a. Foiſton.*

Or, in *alieno ſolo*. 4 *Co.* 32. *a.*

So, by Cuſtom, he may have Sole Paſture in the Waſte of the Lord. *R.* 2 *Sand.* 327. *Pol.* 16. *Dub. Vau.* 255.

And may claim Sole Paſturage for his Cattle, tho' not *levant* and *couchant*. *R. Pol.* 20. 2 *Sand.* 327.

But he can have Common only for his Cattle *levant* and *couchant*. *Adm.* 2 *Sand.* 327.

So he may licenſe a Stranger to put his Cattle into Sole Paſture. *R.* 2 *Sand.* 327. *Pol.* 23.

But not into Common. *Adm.* 2 *Sand.* 327.

So a ſingle Copyholder may alledge a Cuſtom to have Common within the Waſte of the Lord. *R.* 4 *Co.* 32. *a.*

So, by ſpecial Cuſtom, a Copyholder may have Eſtovers, or other Profit within the Waſte, or Woods of the Lord. 4 *Co.* 32. *a.*

[A Copyholder in Fenny Lands may be intitled to dig the Lord's Soil for Turf. *Dean of Ely* v. *Warren*, *T.* 1741. 2 *Atkyns* 189.]

[Common of Turbary cannot belong to an Occupant. *Ibid.*]

And tho' the Lord ſells his Waſte, and afterwards grants a Copyhold, the Copyholder ſhall have Common. 1 *Brow.* 231. *Vide Poſt*, (K. 7.)

But if the Lord enfeoff his Copyholder, who has Common by Cuſtom, whereby the Copyhold is deſtroyed, he ſhall not have Common; for it is gone. *R.* 1 *Sal.* 170.

So,

So, if he confirm the Eſtate of the Copyholder *cum pertinentiis*. *R.* 2 *Cro.* 253. 1 *Bul.* 2. *Yel.* 189. 1 *Brow.* 220. 2 *Brow.* 209.

So, if the Lord by Deed grants the Freehold of a Copyhold, to which Eſtovers belong, to his Copyholder, with all Lands and Hereditaments appurtenant, or uſed with it; the Eſtovers are deſtroyed. *R.* 2 *Cro.* 253. *Mo.* 667. 2 *Brow.* 211.

So, if the Lord grants the Freehold of a Copyhold, to which Common belongs, with all Profits and Common Appurtenant; the Grantee ſhall not have Common, for it was appurtenant to the Cuſtomary Eſtate, not to the Freehold. *R.* 2 *Rol.* 61. *l.* 5. *D. Cont.* 1 *Bul.* 2.

Tho' the Grant was only for Years. *R.* 2 *Rol.* 61. *l.* 10.

Yet, if a Copyhold to which Common belongs eſcheats, and the Lord, by Deed, grants it with all Common Appurtenant, or uſed with it; the Grantee ſhall have Common, for it amounts to a new Grant, tho' the antient Common was extinct. *R. Cro. El.* 794. 2 *And.* 169.

So, if a Copyholder has Common out of the Manor, and be enfranchiſed, his Common remains, for it belongs to the Land. 1 *Sal.* 170.

(K. 7.) Shall take Trees.

So, by ſpecial Cuſtom, a Copyholder in Fee may cut down Trees, and ſell them, at his Will. *R.* 1 *Rol.* 560. *l.* 25. *Cro. Car.* 221. *Dal.* 8. *Noy* 2.

So a Copyholder for Life, who by Cuſtom names his Succeſſor; for he has *quaſi* an Inheritance. *R.* 1 *Rol.* 560. *l.* 35. 1 *Brow.* 132. 2 *Brow.* 87. *Noy* 2.

And one ſingle Copyholder may preſcribe to have Power to cut Trees. *R. Cro. El.* 353. 4 *Co.* 32.

But a Copyholder for Life merely cannot cut down and ſell; for ſuch Cuſtom, that a Copyholder, who has not any Intereſt but for Life, may cut down Trees at his Will, is void. *R.* 1 *Rol.* 560. *l.* 30. *Adm.* 3 *Bul.* 81. *R.* 2 *Cro.* 29. *R. Cro. Car.* 221. *R.* 1 *Bul.* 158. 2 *Brow.* 85. *Noy* 2. *Jon.* 245.

Or, that every Copyholder may cut. *Win.* 1.

So a Cuſtom, that a Copyholder may pull down Houſes, is void. *D.* 1 *Bul.* 51.

So, by ſpecial Cuſtom, a Copyholder ſhall take Houſebote, Hedgebote, Cartbote, *&c.* *R. Cro. El.* 5. *Adm. Mo.* 812.

So it ſeems, without a ſpecial Cuſtom. *Per Holt*, *Sal.* 638.

And if the Lord cut down Trees where by Cuſtom the Copyholder ſhall have the Lops; an Action upon the Caſe lies againſt the Lord. *R.* 1 *Rol.* 196. 1 *Brow.* 231. 1 *Rol.* 108. *l.* 10.

Or Treſpaſs. *Per Cur' inter Aſhmede and Ranger*, *R.* 12 *W.* 3. (*Reported Comyns's Rep.* 71. *Sal.* 638. *Ld. Ray.* 551. *But reverſed in Parl. Sal.* 638. *Ld. Ray.* 551.) *R.* 1 *Leo.* 272.

So, if the Lord bargains and ſells his Trees, and the Bargainee cuts them down, an Action upon the Caſe lies againſt the Bargainee. *R.* 1 *Brow.* 231.

So, if the Lord demiſes the Manor for Years, except the Trees, and the Leſſee grants a Copyhold; the Copyholder ſhall have the Lops of the Trees, for they are Parcel of the Manor. *R.* 1 *Brow.* 231.

Otherwiſe, if the Leaſe was for Life; for then they are ſevered from the Manor. *Ibid.*

So, if a Copyholder for Life does Waſte, and cuts down Trees, *&c.* he in Remainder ſhall have an Action upon the Caſe. *Dub.* 3 *Lev* 131.

So, if a Stranger cuts down Trees upon a Copyhold, the Copyholder ſhall have an Action upon the Caſe for the Loſs of Shade, Fruit, *&c.* tho' it was not the Cuſtom for him to take the Trees. 3 *Lev.* 131.

So, the Lord alſo, for the Prejudice to his Inheritance. 3 *Lev.* 131. *Vide Action upon the Caſe for Miſfeazance*, (A. 2)

So the Lord may have Treſpaſs. 2 *Kol.* 551. *l.* 50.

So a Copyholder ſhall have Treſpaſs *Quare Clauſum fregit & ſuccidit*. 2 *H.* 4. 12. 4 *Co.* 21. *b.*

So, where there is not a ſpecial Cuſtom for the Copyholder to cut, the Lord may cut, and the Copyholder has no Remedy againſt him; Tho' he be Copyholder for Life, and pleads that he has not ſufficient for Repairs. *R. Cont. in B. R. and Exch. but reverſed in Parl. Sid.* 638. *(Ld. Ray.* 551.)

So the Lord may grant all the Wood.

And if he grants it to a Copyholder, the Benefit does not merge in his Copyhold. 1 *Ver.* 22.

(K. 8.) Shall render his Services.

A Copyholder ought to do his Services to the Lord. 42 *Ed.* 3. 25. *b.*

When a Denial of Services is a Forfeiture, *Vide Poſt,* (M. 4.)

(K. 9.) Fealty.

Tenant by Copy ſhall do Fealty. *Co. L.* 63.

When a Freeman does Fealty he ſhall put his right Hand upon the Book, and ſhall ſay, *I ſhall be faithful and true unto You, and Faith to You ſhall bear for the Lands which I claim to hold of You, and I ſhall lawfully do to You the Cuſtoms and Services, which I ought to do at the Terms aſſigned, So help me God*; then he ſhall kiſs the Book. *By the St.* 17 *Ed.* 2. *Lit. S.* 91.

But a Villein ſhall ſay, *I from this Day forward ſhall be to You true and faithful, and ſhall owe You Fealty for the Lands that I hold of You in Villenage, and ſhall be juſtified by You in Body and Goods. So help me God. By the St.* 17 *Ed.* 2. *Raſt. Co. L.* 68. *a.*

Tenant by Copy ſhall do Fealty in Perſon; for he cannot ſwear by Attorney. 9 *Co.* 76. *Co. L.* 68. *a.*

But the Steward may take Fealty for his Lord. *Lit. S.* 92.

Or, the Bailiff. *Ibid.*

(K. 10.) Rent.

A Copyholder ſhall render Rent.

And if the Copyhold comes to the Lord by Eſcheat, *&c.* he may make a Grant of it, rendring a greater Rent. *Per Lea,* 2 *Rol.* 236.

But if a Man by Deed demiſes a Copyhold and Free-land, rendring Rent; the whole Rent ſhall iſſue out of the Free-land, for the Leaſe without Licence is void as to the Copyhold. *Per Dy. Mo.* 50.

So, if Copyholder ſurrenders, rendring Rent; the Reſervation of Rent is void. *D. Mo.* 352.

And if the Lord, upon a Surrender makes an Admittance, rendring a greater Rent, the Reſervation is void. 2 *Rol.* 236.

(K. 11.) Relief.

So, by Cuſtom, a Copyholder ſhall be bound to pay a Relief to his Lord, either by Tenure, or Reſervation. *Jon.* 133.

And, by Cuſtom, it may be but 1 *d.* tho' the Rent be 10 *s.* *Kit.* 103. *a.*

Or, a Moiety of the Rent upon a Deſcent, and as much upon a Purchaſe. *Kit.* 103. *a.*

So, by Cuſtom, a Relief may be due upon Alienation. *Lat.* 95.

And a Deviſe ſhall be an Alienation. *R. Lat.* 95.

So, every Freeholder, who has Land by Deſcent within a Manor, being of full Age, ſhall pay a Relief. *Lit. S.* 112.

Or being of any Age, if he does not hold by *Chivalry*. *Kit.* 146. *Co. L.* 91.

So, if he dies, his Heir being within Age, and in Ward to the King for all his Land, at full Age he ſhall pay a Relief to the other Lord. *R.* 2 *Cro.* 28.

So, if the eldeſt Son dies before Entry, whereby the Youngeſt enters, he ſhall pay two Reliefs. *Kit.* 146.

If a Tenant enfeoffs his Heir, and dies before the Lord accepts him, the Heir ſhall pay a Relief. *Ibid.*

If the Heir after his Anceſtor's Death enfeoffs *B.* of whom the Lord accepts Rent; yet he ſhall pay a Relief. *R. Cro. El.* 885.

But if he dies, his Heir being within Age, and the Lord refuſes the Ward, he ſhall not have Relief. *Semb.* 2 *Cro.* 28.

So,

So, if one Parcener dies, his Heir being of full Age, no Relief ſhall be paid; for all the Parceners are but one Tenant to the Lord, and a Relief cannot be apportioned. *R.* 3 *Leo.* 13.

So, if upon a Grant in Fee Farm no Rent be reſerved, or the full Value; no Relief ſhall be paid. *Mo.* 168.

So, he, who is in by Purchaſe ſhall pay no Relief. *Kit.* 146.

So an Heir, by Deſcent, of a Reverſion after an Eſtate for Life, ſhall not pay a Relief, till the Reverſion falls in. *Kit.* 146. *b.*

So Tenant by Fee-Farm ſhall pay no Relief. *Ibid.*

So none ſhall pay, except the true Tenant in Fee. *Keil.* 82. *a.*

The Lord ſhall diſtrain for a Relief, and ſhall not have Debt for it. *Co. L.* 83.

But his Executor or Adminiſtrator ſhall have Debt, and ſhall not diſtrain. *Co. L.* 83. *b.*

(K. 12.) What Remedy for Rent.

If a Copyholder refuſes Payment of his Rent due, upon a perſonal Demand, it is a Forfeiture. *Vide Poſt*, (M. 4.)

So, if a Copyholder ſurrenders the Reverſion after a Leaſe to *A.* who is admitted; the Aſſignee ſhall have Covenant againſt the Leſſee for Non-Payment of the Rent, within *St.* 32 *H.* 8. 34. *R. Cont.* 2 *Cro.* 305. *Yel.* 223. *Per Hob.* 178. *Dub. Cro. Car.* 25. D. *cont. Cro. Car.* 44. *R. acc.* 3 *Lev.* 327. *Vide Poſt*, (N.) *R. acc.* 1 *Sal.* 185. *Sho.* 285. *Skin.* 305.

So he ſhall enter for a Condition broken within the ſame *St.* 32 *H.* 8. 34. *Semb.* 3 *Lev.* 327.

So the Reverſioner may diſtrain for Rent, without Attornment or Notice. *R. Ray* 18. *R. Pol.* 142. 1 *Lev.* 40.

So, if *A.* makes a Leaſe of a Farm, Part Copyhold, and Part Freehold, rendering Rent, and afterwards aſſigns the Reverſion by Grant and Surrender to *B.* the Rent iſſues out of both, and *B.* ſhall have Debt againſt the Leſſee or his Aſſignee. *R. Cro. El.* 606, 622.

(K. 13.) Suit of Court. By a Copyholder.

So a Copyholder ſhall do Suit at the Court of his Lord.

And he ought to do it in Perſon, and not by Attorney; for he is not within the *St. of Merton*, 20 *H.* 3. 10. 2 *Inſt.* 100. *R.* 1 *Leo.* 104.

So he cannot do perſonal Services by Attorney. 1 *Leo.* 104.

But a Copyholder may compound with the Lord *pro ſecta relaxanda*. *Kit.* 74.

(K. 14.) By a Freeholder.

So a Free-man may do Suit at the Lord's Court.

But by *St. Marl.* 52 *H.* 3. 9. A Free-man ſhall not be diſtrained to do Suit, if he is not bound to do it by his Feoffment or Preſcription.

And by the ſame Stat. If Land, which ought to do Suit, deſcends to Parceners, ſhe who has the Part of the Eldeſt, ſhall do Suit for all, and the others ſhall make Contribution.

So by the ſame Stat. Jointenants or Tenants in Common ſhall do but one Suit for all the Land. 2 *Inſt.* 119. 6 *Co.* 1. *b.*

So a Feoffee of the Eldeſt's Part ſhall do Suit for all the Parceners. 2 *Inſt.* 119. 6 *Co.* 1. *b.*

So Tenant by the Curteſy. 2 *Inſt.* 119.

And a Woman may be a Suitor at a Court Baron. *Ibid.*

But where the Free-ſuitors are Judges, a Woman ſhall not be Judge there. *Ibid.*

But none ſhall do Suit, when he is in Ward of the King, or his Committee. *F. N. B.* 158. *A.*

Nor, Tenant in Dower, of Lands in Ward of the King. *F. N. B.* 158. *B.*

Nor, the Leſſee of the King, of Lands eſcheated or forfeited. *F. N. B.* 159. *A.*

So Tenant in Dower, of any Land, ſhall not do Suit; if the Heir has ſufficient to be diſtrained for it in the ſame County. *Ibid.*

So, if the Lord purchaſes Part of the Land, the whole Suit is gone; for he cannot have, nor make Contribution. 2 *Inſt.* 120.

So, if Parcel deſcends to the Lord. *Ibid. Semb.*

Yet

Yet if a Tenant enfeoffs another of Parcel, every one ſhall do Suit; for the Service being intire ſhall be multiplied. *Vide* 2 *Inſt.* 119. 6 *Co.* 1. *b.*

So, if Land deſcends to Parceners, where the King is Lord, all ſhall do Suit; for they are not within the *St. of Marl. F. N. B.* 159. *C.*

And this after Partition, or before. *F. N. B.* 159. *C.*

(K. 15.) By Attorney.

By the *Stat of Merton*, 20 *H.* 3. 10. Every Freeholder may do Suit by Attorney at the Hundred, Court Baron, *&c.*

But he ought to make an Attorney under his Seal. 2 *Inſt.* 100.

And if the Steward does not allow his Attorney, he ſhall have a Writ *de Attornato allocando.* 2 *Inſt.* 100.

And upon that an *Alias*, *Pluries*, and Attachment, if the Refuſal be continued. *Kit.* 74. *a.*

Such Attorney ſhall do the ſame Suit as the Freeholder ought. 2 *Inſt.* 100.

But he cannot be a Judge as the Freeholder is; for no Act can be done in a judicial Capacity, by Attorney. 2 *Inſt.* 100.—*Cont. Per Holt*; for the St. makes no Difference, *inter Hunt and Bourn*, *H.* 1 *Ann.* 1 *Sal.* 341. And therefore, a Fine in *Antient Demeſne* before an Attorney of the Suitors is good. *R. int. Hunt and Bourn*, *H.* 1 *An.* 1 *Sal.* 340, 1.

(K. 16.) Suit real.

Every one of the Age of twelve Years ought to do Service, at the Tourn or Leet, and take an Oath to be loyal, *&c. Co. L.* 68. *b.*

Clerks, and Women were not exempted by the Common Law. 2 *Inſt.* 121.

And every Perſon is reſiant within ſome Leet.

And a Perſon not reſiant may be bound to do Suit at the Leet. *Sal.* 604.

But by the Common Law, Perſons having Cure of Souls were exempted. 2 *Inſt.* 121. *F. N. B.* 160. *C.*

And by the *St. Marl.* 52 *H.* 3. 10. *Archiepiſcopi*, *Epiſcopi*, *Abbates*, *Priores*, *Comites*, *Barones*, *Viri religioſi*, *& Mulieres.*

And, by the Equity of this Statute, all Eccleſiaſtical Perſons, Secular or Regular. 2 *Inſt.* 121.

So Tenant in *Antient Demeſne* ſhall not be diſtrained to do Suit at the Leet, or Sheriff's Tourn. *F. N. C.* 161. *C.*

This Suit ſhall not be done by Attorney; for it is not within the *St. of Merton*, 20 *H.* 3. 10, 2 *Inſt.* 99.

But by the *St. of Marl.* 52 *H.* 3. 10. A Man having Land in two Leets, ſhall do Suit only where he is converſant.

If his Houſe be within two Leets, he ſhall do Suit where his Bed is. 2 *Inſt.* 122.

If his Family is within two Leets, he ſhall appear where he is commorant. *Ibid.*

(K. 17.) Remedy for Suit.

And the Servant ſhall be ſaid to be reſiant, where the Maſter is. *Kit.* 33. *b.*

For Suit-Service the Lord may diſtrain. 2 *Inſt.* 118.

For Suit by Parceners before Partition, the Lord may diſtrain any of them to do Suit. *F. N. B.* 159. *E.*

So, after Partition; but then the others ſhall have a Writ againſt the eldeſt Parcener to do Suit, and ſhe ſhall have a Writ *de Contributione facienda* againſt thoſe who refuſe Contribution. 2 *Inſt.* 119.

But a Writ *de Contributione facienda* does not lie before Partition; for it is not within the *St. of Marl.* 9. 2 *Inſt.* 119.

Nor in the Caſe of the King does it lie, before, or after Partition; for the St. *Marl.* 9. does not extend to the King's Courts. *Ibid.*

So for Suit of Joint-tenants, the Lord may diſtrain each. *Ibid.*

But if one does Suit, he ſhall not have a Writ *de Contributione facienda* againſt the others; becauſe the Poſſeſſion is intire. *Ibid.*

So for Suit by Tenants in Common, the Lord may diſtrain either, and he ſhall have a Writ *de Contributione facienda*. 2 *Inſt.* 119.

By *St. Marl.* 52 *H.* 3. 2. The Lord ſhall not diſtrain for Suit-Service out of his Fee. 2 *Inſt.* 104.

An

And for Suit Real, the Lord ſhall not diſtrain, but there ſhall be an Amerciament. 2 *Inſt.* 118.

And for Suit of Court the Lord ſhall not have a Writ *ad Sectam in Curiâ ſuâ faciendam*; becauſe he may diſtrain. *Qu. F. N. B.* 158. *D.*

If the Lord diſtrains for Suit-Service, when it is not within a Charter of Feoffment, by *St. Marl.* 9. the Tenant ſhall have a Writ *contra formam Feoffamenti. F. N. B.* 163.

Which lies only for the Feoffee and his Heirs, againſt the Feoffor and his Heirs. *F. N. B.* 163. *C.*

If the Lord diſtrains Parceners, Joint-tenants, *&c.* contrary to the *St. Marl.* 9. the Tenant ſhall have a Writ upon the Statute *de exoneratione Sect. F. N. B.* 159.

So, if he diſtrains a Ward of the King, or any one who ought not to do Suit. *F. N. B.* 158.

So, if the Lord diſtrains Perſons to come to his Leet, who are exempted by the *St. Marl.* 10. they ſhall have a Writ upon this Statute for their Diſcharge. *F. N. B.* 160. 2 *Inſt.* 121.

So, if he diſtrains any, who are exempt from Suit to the Leet, by the Common Law, they ſhall have a Writ, that he do not diſtrain them. *F. N. B.* 161. *C.*

But for Suit of Court, the Tenant ſhall not have a Writ of Attachment, but only after a Writ that the Lord ſhall not diſtrain him, if he be diſtrained when he ought not by the Common Law; tho' if he be diſtrained when he ought not by any Statute, he ſhall have an Attachment at firſt. *F. N. B.* 160. *B.*

(K. 18.) Heriot. What it is.

Heriot is the beſt Beaſt, or other Thing, due to the Lord upon the Death, or Alienation of his Tenant.

But the Lord ſhall have that which he chooſes for the beſt, tho' it be the worſt. *Hob.* 60.

(K. 19.) Heriot Service. When due.

Heriot may be due by Tenure, which is Heriot-Service, or by Cuſtom.

Heriot-Service is due only upon the Death of a Tenant in Fee. *D.* 21 *H.* 7. 13. *a.*

Yet it may be reſerved upon a Leaſe for Life, after the Death of Tenant for Life. *R. Lut.* 1367.

So, if a Leaſe be to *A.* for Life, and afterwards to *B.* for Life, Remainder to *C.* for Life, an Heriot may be reſerved after the Death of each of them. 2 *Sand.* 167.

So, if a Leaſe be for Years, if two Lives continue, it may be reſerved after the Death of each Life. 2 *Sand.* 165. *R. Lut.* 1367. *Winch* 47, 57.

If Tenant by Heriot-Service aliens Parcel, the Heriot ſhall be multiplied. *Fitz. Heriot* 1.

And if the Lord be ſeiſed of a Heriot by the Alienee; it continues, though the Tenant re-purchaſe this Parcel. *Ibid.*

But a Heriot is not due, if the Tenant at his Death had no Beaſts. *Semb. Hob.* 176. *Hut.* 4. *Dy.* 199.

Nor is it due of the Goods of *Ceſtuy que Truſt*, but of him who has the legal Eſtate. 1 *Ver.* 441.

Heriot-Service is of the Nature of a Rent. 2 *Sand.* 166.

And therefore ſhall go with the Reverſion to the Heir. *Ibid.*

Or, to the Grantee of the Reverſion. *Ibid.*

So, if there be a Leaſe for Lives, rendring Rent, and an Heriot upon every Death, and afterwards the Manor is leaſed for Years; the Heriot goes with the Reverſion to the Leſſee. *R. Win.* 47, 57.

So, if a Leaſe be for 99 Years, if two Lives ſo long continue, to commence after a Death, Surrender, *&c.* of a former Leaſe, reſerving an Heriot after the Death of each Life; if either dies before the Leaſe commences, no Heriot ſhall be paid. *R. per three J. Keeling cont.* 2 *Sand.* 166. 1 *Sid.* 437. 1 *Vent.* 91. 1 *Lev.* 294. 2 *Keb.* 677.

So, for the laſt Life no Heriot can be ſeiſed, or levied by Diſtreſs, but only by Action upon the Contract; for by his Death the Term is determined. *Dub. Lut.* 1368.

(K 20.) How recovered, By Seiſure.

Heriot-Service may be ſeiſed. *Cont. per Frowick, Kel.* 82. *a.* 84. *b. R. acc. Pl. Com.* 96. *R. acc. Mo.* 540. *Cro. El.* 590. *R. cont. Bend. pl.* 47. *R. cont.* 1 *And.* 299. *Acc. Bro. Heriot* 2.

So, an Heriot due by Reſervation; for that is an Heriot-Service. *Dub. Lut.* 1367, 8.

And the Seiſure may be out of his Fee. 6 *Ed.* 3. 36. *a. R. Lut.* 1367. *Bend. pl.* 47. *Fitz. Heriot* 5. *R.* 1 *Sal.* 356.

And, by a Stranger to the Uſe of the Lord. *Per Keble,* 2 *H.* 7. 15. *b.*

So, if the Heriot be eloigned, the Beaſt of another, remaining within his Fee, may be diſtrained or ſeiſed. *Per Chard,* 27 *Aſſ.* 24.—*Per Cur. Kel.* 167. *a.*—It may be diſtrained, but not ſeiſed. *Cro. Car.* 260.

So, if an Heriot be ſold, it may be ſeiſed in the Hands of the Vendee, unleſs the Sale was in *Market Overt. Kit.* 134. *b.*

But, generally, the Beaſt of another may not be ſeiſed for an Heriot. 1 *Ed.* 3. 6. *a. D. Cro. Car.* 260.

So, if upon a Leaſe for three Lives there be reſerved for an Heriot upon the Death of each, *his or their beſt Beaſt,* and the Leaſe be aſſigned, and then one of the Lives dies; the Beaſt of the Aſſignee cannot be taken. *R.* 2 *Rol.* 451. *l.* 30. *Lut.* 1368.

So, upon a Reſervation of an Heriot, the Beaſt of another upon the Land cannot be diſtrained. *Dub.* 3 *Mod.* 231. *Lut.* 1368.

(K. 21.) By Diſtreſs.

So for Heriot-Service a Man may diſtrain, for it is a Service annexed to the Land. *Per two J.* 8 *H.* 7. 10. *b. Pl. Com.* 96. *a. Cro. Car.* 260. *Bro. Heriot* 2.

And may diſtrain the Cattle of another continuing upon the Land. *Cro. Car.* 260. *Bro. Heriot* 6. *Vide Ante,* (K. 20.)

In Avowry for Heriot-Service, he ought to preſcribe, that he and all thoſe whoſe Eſtate, *&c.* ought to have an Heriot upon the Death of every Tenant. 21 *H.* 7. 13. *a.* 15. *a.*

And he ought to ſhew, what Land he holds in particular. 21 *H.* 7. 16. *a.*

And alledge Seiſin in himſelf, or in his Anceſtor. 6 *Ed.* 3. 36. *a. Per* 3 *J.* 14 *H.* 4. 5. *a.*

And ſhew, whether the Heriot be a Beaſt or other Thing. *R. Hob.* 176. *Hut.* 4.

It is ſufficient if it be alledged, that he died his Tenant, without ſaying, that he died ſeiſed. *Per Cur.* 44 *Ed.* 3. 13. *a.*

And in Avowry for an Heriot, he need not ſhew for what Beaſt, or, of what Value. *R. Cro. Car.* 260. *Jon.* 300.

And if he avow for ſeveral Heriots, it is ſufficient to ſay, that he took them *nomine Heriotor'* generally. *R.* 1 *Bul.* 102.

But an Avowry, that every Tenant at his Death hath uſed to pay an Heriot, is repugnant and bad. 21 *H.* 7. 13. *a.* 15. *a.*

So an Avowry without alledging Seiſin of the Services, whether it be Rent-Service, or not, or upon the Death of what Tenant it is due, is bad. *Bend. pl.* 119.

So, for an Heriot upon Reſervation of the beſt Beaſt, or 5*l.* at Election, the Leſſor, or at leaſt his Bailiff cannot diſtrain for the beſt Beaſt, till a Demand, or Election made. *D. Lit,* 35.

So a Diſtreſs for an Heriot cannot be out of the Manor. 1 *Sal.* 356.

The Property of an Heriot-Service is not veſted in the Lord till Diſtreſs, or Seiſure, 8 *H.* 7. 10. *b. Semb.* that it was veſted before, otherwiſe he could not ſeiſe. *Pl. Com.* 96. *a.*

Seiſure of an Heriot-Service, due by antient Tenure, may be out of the Manor. *Per Holt, Sho.* 81.

Other-

Otherwiſe, of an Heriot reſerved by Deed. *Sho.* 81. *R. cont. Lut.* 1367.

Heriot-Service ſhall be extinct by Unity of Poſſeſſion. 14 *H.* 4. 5. *a. Bro. Heriot* 8.

So, if the Lord purchaſes Parcel of the Land. *Co. L.* 149. *b. R.* 8 *Co.* 105. 2 *Brownl.* 294.

So, if a Tenant makes a Settlement upon his Son in Marriage, it avoids the Heriot, and is not fraudulent within *St.* 13 *El.* 5. *R.* 2 *Brownl.* 187.

But by *St.* 13 *El.* 5. A Feoffment, *&c.* or Conveyance of Lands, *&c.* of an Intent to defraud, *&c.* of Heriots, *&c.* as to the Perſons ſo defrauded ſhall be void; and the Perſon, Party to ſuch Conveyance, *&c.* who ſhall wilfully put in Ure, *&c.* the ſame, ſhall forfeit a Year's Value of ſuch Lands, and the whole Value of ſuch Goods, *&c.*

And upon this an Action lies for the Lord *qui tam, &c.* for all Goods aliened to defeat him of his Heriot, tho' other Lords are alſo defeated; and the Plaintiff ſhall recover only the Value of his Heriot. *Semb. Dy.* 351. *b.*

So, if Tenant by Heriot-Service enfeoffs *A.* of Part; the Service, being intire, ſhall be multiplied, and not extinct. *R.* 8 *Co.* 106.

And if the Lord afterwards purchaſes the Part of the Feoffor, the Heriot-Service due from *A.* is not extinct. *R.* 8 *Co.* 106. *a.*

So, for an Heriot reſerved upon a Leaſe, Debt lies. 2 *Sand.* 167. (K. 22.) By Action. *Vide Poſt,* (K. 26.)

Or, Covenant. 2 *Sand.* 165, 7.

So an Heriot may be due by the Cuſtom of a Manor, upon the Death of every Tenant of an Eſtate of Inheritance. (K. 23.) Heriot-Cuſtom. When due.

If he dies his Tenant, tho' he does not die ſeiſed. *Kit.* 134 *a. Bro. Heriot* 1.

So, upon the Determination of an Eſtate for Life, tho' the Eſtate has not Continuance afterwards. 21 *H.* 7. 15. *b. Kel.* 80. *Kit.* 133. *Bro. Heriot* 5.

Or, upon the Determination of an Eſtate for Years. *Kel.* 80. 21 *H.* 7. 15.

Or, at Will. 2 *Bul.* 196.

So, by Cuſtom, it may be due upon the Surrender, or Alienation of the Tenant. *Adm.* 3 *H.* 6. 45. *b. Kit.* 134. *b.*

So, by Cuſtom, it may be due upon Death of the Head of a Body Politick. *D. Long.* 5 *Ed.* 4. 72. *b.*

So it may be upon the Deaths of ſome Tenants, tho' not upon the Deaths of others within the ſame Manor. *Kit.* 134. *b.*

So, if a Man dies Tenant of ſeveral heriotable Tenements, he ſhall pay ſeveral Heriots. *Kit.* 134. *a.*

And if a Tenant enfeoffs ſeveral Parts of heriotable Lands, each ſhall pay an Heriot; for they ſhall be multiplied. 6 *Co.* 1. *a.*

If Land eſcheats, *&c.* and afterwards is re-granted, yet an Heriot ſhall be due upon Death; for Heriot-Cuſtom is not extinct by Unity of Poſſeſſion. 14 *H.* 4. 5. *a. Per Huſſy,* 8 *H.* 7. 11. *a. But the Reporter makes a Quære. Per* 2 *J. Acc.* 2 *Brownl.* 295, 6.

If a Tenant ſurrenders to another, and dies before the Surrender is preſented; an Heriot ſhall be due. *Kit.* 135. *a.*

So, if a Copyholder be diſſeiſed, and dies before Re-entry; for he is Tenant in Right. *Per Berkly,* 2 *Rol.* 72. *l.* 35.

So if a Tenant enfeoffs the Lord of Part of heriotable Land; the Heriot-Cuſtom ſhall not be extinct. 8 *Co.* 106. *b.* 2 *Brownl.* 295, 6.

And an Heriot ſhall be paid before a Mortuary. *Co. L.* 185. *b.*

And, tho' a Teſtator deviſes all his Goods. *Ibid.*

So, by Cuſtom, ſo much Money may be due, *loco Heriotti,* and not a Beaſt. *Kit.* 103. *a.*

Or, the beſt Chattel.

But if an Heriot be due upon the Death of every Tenant, and the Land be granted to Joint-tenants, no Heriots ſhall be paid upon the Death of one, till the Deaths of all the Joint-tenants, without a ſpecial Cuſtom; for all are but one Tenant. 24 *Ed.* 3. 72. *b. Tr.* 25 *Ed.* 3. *pl.* 3. *Bro. Heriot* 4. *Fitz. Heriot* 3, 5. (K. 24.) When not.

So, if a *Feme Covert* dies Tenant of heriotable Land, no Heriot ſhall be paid; for ſhe has no Goods.

So, where by Cuſtom a Corporation pays an Heriot upon the Death of the Head, if a Prior has ſuch Land and dies, he ſhall not pay an Heriot; for he has no Goods. *Kit.* 134. *a.*

So a Cuſtom to pay an Heriot upon the Death of every Stranger, who dies within the Manor, is not good. 4 *Mod.* 321. *Dy.* 71. *b. in Marg. R. Cro. El.* 725.

(K. 25.) How it ſhall be recovered. By Seiſure. *Vide Ante,* (K. 20.)

By the Death of the Tenant the Property of an Heriot-Cuſtom is veſted in the Lord immediately.

And therefore, the Lord may ſeiſe an Heriot-Cuſtom, but not diſtrain for it. *Per* 2 *J.* 8 *H.* 7. 10. *b.* 27 *Aſſ.* 24. *Per Cur. Kel.* 167. *Pl. Com.* 96. *a.*

And he may ſeiſe in any Place. *Kel.* 82. *a.* 84. *b. Per Holt, Sho.* 81. 1 *Sal.* 356.

But he cannot ſeiſe the Beaſt of another. 3 *H.* 6. 45. *b. Cro. Car.* 260.

And a Cuſtom to take the Beaſt of another upon the Land, if the Heriot be eloigned, is void. *R. Dy.* 199. *b.* 2 *Brownl.* 90. *R. Mo.* 16. *Bend. pl.* 147, 294.

So, if the Lord ſeiſes the worſt Beaſt, for the beſt, he muſt be content with his Election, and cannot afterwards ſeiſe another. *Bro. Heriot* 11. *Hob.* 60.

(K 26.) By Action. *Vide Ante,* (K. 22.)

So if an Heriot be eloigned that the Lord cannot ſeiſe, he may have *Detinue* againſt him who detains it; for the Property was immediately in him. *Bro. Heriot* 6, 9.

But he cannot diſtrain for an Heriot-Cuſtom; for the Property being in him, a Preſcription to diſtrain for his own Goods, is not good. *Bro. Heriot* 2, 6, 7.

So he cannot preſcribe, that every Tenant ought to pay an Heriot after his Death, but, that after a Death he ought to have, *&c. R.* 21 *H.* 7. 13. *a.* 15.

(K. 27.) To what Lord it ſhall be paid.

If the Lord grants the Freehold of his Copyholds, or of a particular Copyhold in Fee, or for Years; the Heriot ſhall be paid (if the Land be heriotable) to the Grantee. *Vide Ante,* (B. 2.)

But if the Grant be of the Freehold to *A.* for the Life of the Copyholder, and afterwards to the Copyholder himſelf for Years, who aſſigns the Term, and then dies; the Heriot ſhall not be paid to the Aſſignee, for he was not Lord at the Time when it happened. *R.* 2 *Rol.* 72. *l.* 20.

In *Replevin*, or Treſpaſs, if Defendant avows or juſtifies for Heriot-Service, he ought to alledge Seiſin of the Land, of whom the Manor is held, and by what Services. 8 *Co.* 103. *Vide Pleader,* (3 K. 15.)

So for Heriot Cuſtom, he ought to alledge Seiſin, Cuſtom, Death, and Seiſure of the Heriot. *Lut.* 1310. *Vide Pleader,* (3 K. 28.)

And it is not ſufficient to alledge a Cuſtom to take the beſt Beaſt, without ſaying, *pro Herioto, vel, nomine Herioti. Dy.* 199. *b.*

So the Seiſure ought to be alledged, *pro Herioto, vel, nomine Herioti. Dy.* 199. *b. Semb. Cont. where the Omiſſion was ſhewn for Cauſe of Demurrer, yet the Plea was held good. Win. Ent.* 63.

(L) Copyhold, how deſtroyed.

IF a Copyholder takes a Feoffment from the Lord, of his Cuſtomary Land, the Copyhold is deſtroyed. 4 *Co.* 31. *French.*

So, if he takes a Leaſe for Life, or for Years, the Copyhold is deſtroyed for ever. *R.* 4 *Co.* 31, *French. Vide Ante,* (B. 3.) *Semb. Lat.* 213.

Tho' the Leaſe was by *Parol.* 4 *Co.* 31. 1 *Rol.* 498. *l.* 50.

So, if the Lord makes a Leaſe of Cuſtomary Land, and the Leſſee aſſigns his Term to the Copyholder, the Copyhold is deſtroyed for ever. *R.* 2 *Co.* 17. *a.* 1 *Rol.* 510. *l.* 30. *R. Mo.* 185. 1 *Leo.* 170.

So, if the Lord leaſe a Copyhold for half a Year, or any Time certain. 1 *Rol.* 498. *l.* 50. *Vide Ante*, (B. 3.)

So, if he makes a Feoffment, Leaſe for Life, *&c.* of a Copyhold. 1 *Ver.* 458. *Vide Ante*, (B. 3.)

Tho' he enters for a Condition broken, the Feoffment being upon Condition. *R.* 4 *Co.* 31.

So, if the King grants a Leaſe of Land demiſed by Copy, and afterwards grants the Reverſion to another in Fee, and the Leſſee aſſigns to the Copyholder, the Copyhold is deſtroyed. *R.* 1 *And.* 191.

So, if Tenant in Tail of a Copyhold, Remainder to him in Fee, purchaſes the Freehold, and then makes a Bargain and Sale to *A.* The Iſſue in Tail ſhall not avoid it. *R.* 1 *Ver.* 393.

So, if a Copyholder takes a Leaſe of a Manor, his Copyhold is extinct; but it may afterwards be regranted by Copy. *Vide Ante*, (B. 3.) *R.* 4 *Co.* 31. *b. Cont. Per Shute, Sav.* 70.

So, if a Copyholder ſues Execution upon a Statute and has the Manor in Execution, his Copyhold is gone. *Cont. Per Manwood*, who ſays, that after the Debt levied, the Cuſtomary Intereſt remains. *Sav.* 70.

So, if a Copyholder by Deed ſells his Copyhold to the Lord, his Eſtate is extinct; but may afterwards be regranted by Copy. *R. Hut.* 65. *Jon.* 41.

Tho' the Lord was only Leſſee for Years of the Manor. *R. Hut.* 65.

So, if a Copyholder by Deed releaſes his Copyhold to the Lord, tho' it be not of the Nature of a Releaſe to give Poſſeſſion. *Hut.* 65. *Jon.* 41.

But if the Lord enfeoffs his Copyholder, to the Uſe of another, his Copyhold is not deſtroyed; for it is ſaved by the *St.* 27 *H.* 8. 10. *R.* 7 *Co.* 39. *a*, *Lillingſton.*

So, if the King grants a Copyhold by Patent for Life, it ſhall not be extinct, but the King may afterwards grant it by Copy. *R.* 2 *Rol.* 197. *l.* 5. *Vide Ante*, (B. 3.)

So, if the King afterwards grants the Manor, the Grantee, after the Life ended, may grant it by Copy. *R.* 2 *Rol.* 197. *l.* 20.

So, if the Lord grants the Freehold of a Copyholder to *A.* for the Life of the Copyholder, his Copyhold is not deſtroyed. *R. Hob.* 181.

So, if the Lord makes a new Grant by Copy for Life, with Remainder over, *&c.* to his Copyholder in Fee; the Inheritance of the Copyhold is not thereby deſtroyed. *R. Cont.* 37 *El. ut dicitur*; *but there per* 2 *J. Acc.* 3 *Bul.* 81.

And if the Lord makes a Bargain and Sale of the Inheritance of a Copyhold, to a Copyholder for Life, who accepts it; the Remainder of the Copyhold is not thereby deſtroyed. *R.* 9 *Co.* 106, 7. *M. Podger.*

So, if there be a Copyhold for three Lives *habend' ſucceſſivé*, and the Lord by Deed grants the Inheritance to the firſt, the Intereſt of the ſecond Life is not deſtroyed. *Adm.* 2 *Leo.* 72.

So, if the Inheritance be granted to the firſt Life, Remainder to the ſecond Life, who does not agree to the Grant. *Semb.* 2 *Leo.* 73.

But, if the firſt Life be deſtroyed by Grant of the Inheritance, the ſecond Life in Remainder cannot have the Advantage till the Death of the firſt. *R.* 2 *Leo.* 73.

(M) Copyhold, how forfeited.

(M. 1.) By Treaſon, or Felony.

IF a Copyholder commits High Treaſon, his Eſtate is forfeited to the Lord, not to the King, except by the expreſs Words of an Act of Parliament. 2 *Vent.* 39. *Vide Poſt*, (M. 6.) *Per Hale, Hard.* 434.

And upon his Attainder his Eſtate is abſolutely determined; for he cannot afterwards be of the Homage. 2 *Jon.* 190

Nor take a Surrender out of Court. *Ibid.*

So, if a Copyholder commits Felony, his Eſtate is forfeited to the Lord by Cuſtom. 2 *Jon.* 189. *Pol.* 621. *Skin.* 8.

And a Cuſtom, that, if a Copyholder commits Felony upon Preſentment of the Homage, the Lord ſhall enter, is good. *R.* 1 *Bul.* 13. 1 *Leo.* 1. 2 *Brow.* 217.

Yet if the Lord grants a Copyhold to *A.* for Life, and upon his Death, or Forfeiture to *B.* and *A.* is attainted for Felony, *B.* ſhall enter; for the Lord ſhall not have it againſt his own Grant. *R. Skin.* 29.

But for Treaſon, or Felony, the Lord cannot ſeiſe till Attainder, without a ſpecial Cuſtom allowing Seiſure before. *Per Cur.* 2 *Vent.* 38. *Semb.* 1 *Lev.* 263.

And if the Felon be acquitted upon Trial, the Forfeiture ſhall be diſcharged, tho' the Felony was preſented by the Homage. *R. Godb.* 267.

So, if the Copyholder has Clergy, the Lord cannot ſeiſe without a ſpecial Cuſtom. *Semb.* 1 *Lev.* 263.

So, if the Copyholder be acquitted upon an Indictment. *Dub.* 1 *Bul.* 13. 2 *Brow.* 220. *R. Godb.* 267.

So, if the Huſband be attainted, the Wife does not forfeit her Dower, which ſhe has by Cuſtom in his Copyhold. *R. Hard.* 434.

(M. 2.) By Alienation.

So, if a Copyholder makes an Alienation by Deed, it is a Forfeiture by the general Law of Copyholds. *Lit. S.* 74.

As, if he makes a Feoffment.

If he makes a Charter of Feoffment, with a Letter of Attorney to make Livery; tho' no Livery be made, 1 *Rol.* 508. *l.* 21.

So, if he makes a Bargain and Sale in Fee, tho' the Deed be not inrolled; for it is ſufficient to determine a Leaſe at Will. 1 *Rol.* 508. *l.* 17. *but there ſaid to be R. cont.* 38 *Eliz.*

So, if he makes a Leaſe for Life.

Or, if he makes a Leaſe for Years, not allowed by the Cuſtom, without Licence. *Co. L.* 59. *a.*

What Leaſes a Copyholder may make, *Vide Ante,* (K. 3.)

So, if he makes a Leaſe not purſuant to his Licence. *Mo.* 184. *R. Cro. El.* 395.

If the Forfeiture be by a Leaſe without Licence, the Seiſure may be after the Leaſe is determined, *Per Powel, Lut.* 803.

But if he makes a Charter of Feoffment, or Deed of Demiſe for Life, without a Letter of Attorney to make Livery, it is no Forfeiture. 1 *Rol.* 508. *l.* 25. And ſo *Co. L.* 59. *a.* ſeems to be intended.

So, if he makes a Releaſe of his Right to the Copyholder in Poſſeſſion. *Co. L.* 59. *a. Vide Ante,* (I. 1.)

Or, if he promiſes to make a Leaſe but does not. *R.* 1 *Bul.* 190.

Or, makes a Leaſe for a Year, and covenants to make a Leaſe afterwards *de Anno in Annum uſq;* ten Years. *R.* 1 *Bul.* 190. 2 *Cro.* 301.

So, if a Copyholder for Life ſurrenders to another in Fee, it is not a Forfeiture; for nothing paſſes by Livery. 4 *Co.* 23. *a, Bullock. Mo.* 753.

Nor, if he ſuffers a Common Recovery in the Court of the Manor. *R.* 1 *Mod.* 200. 2 *Mod.* 33.

Or, if an Infant makes a Leaſe without Licence. *Noy* 92. *Lat.* 199.

Otherwiſe, if he accepts the Rent at full Age; for his Leaſe was not void, but voidable. *Noy* 92. *Lat.* 199. *R. Jon.* 157.

(M. 3.) By Waſte.

So, if a Copyholder commits Waſte, it is a Forfeiture, by the general Cuſtom of Copyholds. 1 *Rol.* 508. *l.* 31. *R. Mo.* 392. *R. Ow.* 17.

Or, if he permits his Tenement to be in Decay. 1 *Rol.* 508. *l.* 34. *Ow.* 17.

Or, pulls down a Houſe newly built upon the Copyhold. *R.* 1 *Bul.* 51.

Or, if he cuts down Trees on pretence of Repairs, and permits them to be rotten. *Per Clench*, 1 *Rol.* 508. *l.* 52.

[If he tops Timber-trees, and makes them Pollards. *Peachy* v. *D. of Somerſet*, *T.* 7 *G. Str.* 447.]

[If he opens a new Stone-quarry. *Ibid.*]

[If he grubs up and deſtroys Hedges and Boundaries. *Ibid.*]

So, if he builds a new Meſſuage upon the Copyhold. *R.* 4 *Leo.* 241. *Hut.* 103. *Lit.* 266, 7.

So, if a Woman Copyholder takes a Huſband, who does Waſte, it is a Forfeiture, *Per* 2 *J.* 4 *Co.* 27. *a*, *Clifton*. 1 *Rol.* 509. *l.* 25.

And it is a Forfeiture of the Eſtate of the Wife, tho' the Huſband dies; for Waſte tends to the Diſinheriſon of the Lord. 1 *Rol.* 509. *l.* 40. *Vide Poſt*, (M. 5.)

So it is a Forfeiture, tho' he afterwards repairs. *Dub. Lat.* 227.

And by Waſte in one Acre, or by cutting down one Tree, the whole Copyhold is forfeited. *R.* 1 *Rol.* 509. *l.* 10. *Vide Poſt*, (M. 5.)

But if a Copyholder holds ſeveral Copyholds by ſeveral Tenures; Waſte in one is a Forfeiture only of one intire Copyhold, tho' they are all granted by the ſame Copy. *R.* 4 *Co.* 27. *a*. *Cro. El.* 353.

So, if all eſcheat, and are regranted *tenend' per antiqua Servitia*; Waſte afterwards in one is a Forfeiture of that only. *R.* 4 *Co.* 27. *a*. 3 *Leo.* 109.

But if a Copyholder cuts down Timber for Repairs, it is no Forfeiture; for he may do ſo, without a ſpecial Cuſtom. *Per* 3 *J. Cro. El.* 498. 1 *Rol.* 508. *l.* 40. *Mo.* 392,

Tho' he cuts down more than he wants at preſent, and keeps the Reſidue for future Uſe; for he may not know preciſely how much is neceſſary. 1 *Rol.* 508. *l.* 45. *Cro. El.* 499. *Mo.* 393.

So it is no Forfeiture, if he ſells the Top and Bark, when he cuts down Timber for Repairs. *R.* 3 *Bul.* 282.

Or, if he cuts down Trees which the Lord grants to him. *D. Mo.* 94.

So it is no Forfeiture, if a Copyholder, who by Cuſtom may cut Timber, does Waſte. 3 *Bul.* 81. *Cro. Car.* 221.

When Cuſtom allows a Copyholder to cut down Trees, *Vide Ante*, (K. 7.)

So it is no Waſte for a Copyholder in Fee, to dig, or open Mines, in his Soil. *Semb.* 1 *Sid.* 152. (*Vide* 1 *P. W.* 406.)

So it is no Forfeiture, if a Stranger commits Waſte without the Aſſent of the Copyholder. *Per* 2 *J.* 4 *Co.* 27. 1 *Rol.* 508. *l.* 37. *D. Cont. Mo.* 49. *Acc.* 4 *Leo.* 241. *D. Acc.* 1 *Bul.* 52. *R. cont. and agreed to be ſettled. Lut.* 802.

Or one, who occupies with Sufferance of the Copyholder. *D. Cont. Mo.* 49. *Dal.* 49.

So, tho' Waſte be done, *Chancery* will relieve againſt the Forfeiture, upon Satisfaction for it, if there was no Intention to commit Waſte. *R. Ca. Ch.* 96. 2 *Ver.* 664. *Vide Chancery* (2 V.)

As, if Timber cut down was not uſed. *Ca. Ch.* 96.

Or was uſed for the Repair of another Copyhold. *Ca. Ch.* 96. *R.* 2 *Ver.* 537.

Otherwiſe, if there was full and evident Intention to commit Waſte. *Ca. Ch.* 96.

(M. 4.) By denying Services, Fines, &c.

So, if a Copyholder refuſes his Rent, or Services, it is a Forfeiture. 1 *Rol.* 506. *l.* 49. *Dy.* 211. *b. in Marg.*

As, if he refuſes his Rent at the Day. *Hob.* 135. 1 *Rol.* 506. *l.* 36.

So, if he refuſes Suit at the Court of the Lord, upon ſufficient Summons. *R.* 1 *Rol.* 506. *l.* 50. 3 *Bul.* 80, 268. *R.* 3 *Leo.* 108. *R.* 1 *Rol.* 429.

So, if he does it not, upon frequent Demands, tho' he does not poſitively refuſe. *Vide Lat.* 14.

So, if he refuſes to pay a Fine evidently reaſonable, upon Demand. 1 *Rol.* 507. *l.* 20. *Vide Ante*, (H. 7.)

So,

So, if he ſays, that he is not ready to pay his Rent, and the Lord aſſigns a Day certain, within the Manor, for Payment, and he does not pay; it is a Forfeiture, for it amounts to an abſolute Refuſal. *R. Lat.* 122.

Tho' the Place aſſigned for Payment be not at the next Court, but at ſome other Place, within the Manor. *R. Lat.* 122.

But it ought to be within the Manor. *Ibid.*

And it ought to be an abſolute Refuſal; for if the Copyholder ſays, that he cannot pay his Rent immediately, it is no Forfeiture. *R.* 1 *Rol.* 506. *l.* 45. *Cro. El.* 505. *D. Ray.* 42. *Co. Ent.* 647. *d.*

Or, if upon Demand of the Rent at the Time of Payment, the Copyholder is abſent, which is a Refuſal in Law; it is no Forfeiture. 1 *Rol.* 506. *l.* 40.

So it is no Forfeiture, if the Rent be ſeveral Times demanded, and not paid; if it be not denied. *R. Co. Ent.* 288. *b.* *Dub. Lat.* 14, 122. *and there Semb. Cont.* *Acc. Lit.* 268.

So not coming to Court to do his Suit, is no Forfeiture, if he does not refuſe to come. *R. Co. Ent.* 288. *b.* *R.* 3 *Bul.* 80.

So it is no Forfeiture, if a Copyholder refuſes his Services, till the Law determines what are due. *R. Lat.* 14, 123. *(Vide Ray.* 42.)

Or, before the Rent is due, or a Court is held, he ſays, that he will never pay his Rent, or do his Suit. *Per Poph.* 3 *Leo.* 108.

So it is no Forfeiture, if there be not ſufficient Notice; as, if there be not a perſonal Demand of the Rent. *Hob.* 135.

So there ought to be a perſonal Warning to come to the Court, to be held at ſuch a Place, and at ſuch a Time. *R.* 1 *Rol.* 507. *l.* 2. *Co. Ent.* 288. *b.* 1 *Leo.* 104. *per Coke.*

For a general Summons of a Court in the Church, is not ſufficient. *R. Co. Ent.* 288. 1 *Rol.* 507. *l.* 10. *R. Cro. El.* 506. *Cont.* 1 *Leo.* 104.

So it is no Forfeiture, if he has reaſonable Cauſe for his Abſence from Court; As, if he was ſick. 1 *Leo.* 104.

Or, attending upon a great Office. *Ibid.*

So it is no Forfeiture, if a Copyholder has no Notice, that he who demands the Services has an Intereſt in the Manor. *Semb. Lat.* 122.

As, if he refuſes to the Grantee or Bargainee of the Reverſion, before Notice of an Aſſignment. *R.* 8 *Co.* 92. *a.* *Vide Condition*, (L. 4.)

So *Chancery* will relieve againſt a Forfeiture, if Relief is prayed within a reaſonable Time. 2 *Ver.* 664.

So, if a Copyholder, ſworn upon the Homage in a Court Baron, refuſes to preſent according to his Oath, it is a Forfeiture. *Per* 3 *J.* 1 *Rol.* 506. *l.* 32. *Mo.* 350. *Dy.* 211. *R.* 3 *Leo.* 109.

Or, if he refuſes to be ſworn upon the Homage. *Kit.* 90. *b.* *Per Gawdy*, *Mo.* 350. *Kit.* 124. *b.*

So, if a Copyholder diſclaims being Tenant to the Lord, it is a Forfeiture. *Kit.* 124. *b.*

But if he ſays in Court, that he renounces his Copy, it is no Forfeiture. 1 *Rol.* 507. *l.* 15.

So, if the Lord has *Field-courſe* for Sheep upon the Land of his Copyholders, incloſing of the Copyhold, leaving Space for the Sheep, is not a Forfeiture. *R. Hut.* 103. *Lit.* 267.

So, if a Copyholder forges a *Cuſtomary*, and makes uſe of it againſt the Lord, it is a Forfeiture; for the Inheritance of the Lord is in Hazard by it. *Adm.* 3 *Leo.* 108.

So, if he defaces the *Doal marks* which bound the Copyhold. *Lit.* 268.

But forging a *Cuſtomary*, without making uſe of it, is no Forfeiture. *Dub.* 3 *Leo.* 108.

So, if a Copyholder erects a Mill upon his Copyhold, without Aſſent of his Lord, it will be a Forfeiture. *Dy.* 211. *b.* *in Marg.*

So, by ſpecial Cuſtom, it is a Forfeiture if the Heir, or he to whoſe Uſe a Surrender is made, does not come to be admitted upon three Proclamations at three

three ſeveral Courts. 1 *Rol.* 568. *l.* 20. *Adm.* 8 *Co.* 99. 1 *Lev.* 63. *Vide Ante*, (G. 2.)

So if the Surrenderee does not come upon three Proclamations, at the next Court. 1 *Rol.* 568. *l.* 20.

So, by ſpecial Cuſtom, it is a Forfeiture if a Copyholder, into whoſe Hands a Surrender is made, out of Court, according to the Cuſtom, does not preſent it at the next Court.

But if a Copyholder is outlawed, his Copyhold is not forfeited, or determined. *R. Lit.* 234.

So, if a Copyhold is furrendered to *A.* in Truſt for *B.* who is found to be an Alien; the King ſhall not have the Copyhold. *Semb. Al.* 15. *Agreed Hard.* 436.

If an Alien purchaſes a Copyhold in his own Name, the King ſhall not have it, but the Lord himſelf. *R. Dy.* 302. *b. in Marg.*

(M. 5.) What Eſtate ſhall be forfeited.

If a Copyholder makes a Feoffment of one Acre, Parcel of his Copyhold, nothing ſhall be forfeited, but that Acre. *R.* 1 *Rol.* 509. *l.* 5.

But for Waſte in one Parcel, the whole Copyhold is forfeited. *Vide Ante*, (M. 3.)

So, if a Copyholder for Life commits a Forfeiture, his Eſtate for Life only ſhall be forfeited, not the Remainder. 1 *Rol.* 509. *l.* 15. *Cont. Mo.* 49. *Per Gawdy, acc. Cro. El.* 598. *R. acc. Cro. El.* 879. *Yel.* 1. *Noy* 42.

As, if he makes a Feoffment.

Commits Waſte. 1 *Rol.* 509. *l.* 20.

Does not come to be admitted. *R.* 1 *Rol.* 568. *l.* 25. *Yel.* 1. *Ray.* 404. *Per Eyre*, 3 *Mod.* 224.

So, if a Leſſee for Years of a Copyhold with Licence, makes a Feoffment, he forfeits only his Term. 1 *Rol.* 509. *l.* 28.

So, if a Copyholder, by Licence, makes a Leaſe, and afterwards commits a Forfeiture; the Leaſe is not forfeited. *Semb. Hob.* 177. *R.* 2 *Rol.* 372.

So, if an Huſband ſeiſed in Right of his Wife makes a Leaſe without Licence, not allowed by the Cuſtom, he forfeits only during his own Life. *R.* 1 *Rol.* 509. *l.* 30. *Cro. Car.* 7. *Dict. Cro. El.* 149. *Semb.* 2 *Rol.* 344, 361, 372. *R.* 2 *Rol.* 271. *l.* 25.

So, if a Leſſee of a Copyhold for Life, for Years, or in Tail, makes a Leaſe by Indenture, it is no Forfeiture as to him in Reverſion. *R.* 2 *Rol.* 271. *l.* 15, 20, 25.

But if an Huſband ſeiſed in Right of his Wife does Waſte, he forfeits the Eſtate of his Wife alſo; for it tends to the Diſinheriſon of the Lord. 1 *Rol.* 509. *l.* 40. *Vide Ante*, (M. 3.)

So, if he refuſes his Rent or Services. *D. Cro. El.* 149. *D.* 2 *Rol.* 344.

Tho' the Huſband dies before the Entry of the Lord. *Cont. per Dodd.* 2 *Rol.* 344.

So, if the Huſband commits Felony, the Free-bench or Dower of his Wife ſhall be forfeited, if it be not preſerved by ſpecial Cuſtom. *Win. Ent.*

So, if a Copyhold be granted to two for Life *ſucceſſive*, and the firſt commits Waſte, the whole Eſtate is forfeited. *R. Mo.* 49. *D. Dal.* 49.

If a Cuſtom be, that the Copyhold of a Copyholder convicted of Felony ſhall be forfeited; and the Wife is admitted to the Copyhold as her Free-bench, and during her Life, the Heir is convicted, his Eſtate ſhall be forfeited. *R.* 1 *Leo.* 1.

[If *A.* deviſes Copyhold to *B.* and ſurrenders to the Uſe of his Will, and *B.* is hanged for Felony before Admittance, or doing any Act to ſhew he was Tenant, the Lands are not forfeited to the Lord, but deſcend to the Heir of *A.* *Roe* v. *Hicks*, *P.* 27 *G.* 2. 2 *Wilſ.* 13, 16.]

(M. 6.) Who ſhall have Advantage of the Forfeiture.

Dominus pro tempore ſhall take Advantage of a Forfeiture. *R.* 1 *Rol.* 509. *l.* 50.

So the Grantee of the Inheritance of a Copyhold. *R.* 1 *Rol.* 510. *l.* 3. *Mo.* 392, 3. *Cro. El.* 499. *Vide Ow.* 63. *Semb. Cont.*

So Leſſee for Years of ſuch a Grantee. *R.* 1 *Rol.* 510. *l.* 5. *Dub. Cro. El.* 499. *Mo.* 393.

So, if the Lord dies after Forfeiture for Waſte, the Heir ſhall take Advantage of it. *Dub. Lat.* 227. *Cont. per* 3 *J. Powel. acc. Lut.* 802.

So a Leſſee of a Manor by Leaſe made after a Forfeiture committed ſhall take Advantage of it. *R.* 1 *Rol.* 510. *l.* 10. *Cro. Car.* 234. But there the Copyholder ſurrendered to the Lord, not having Notice of the Forfeiture, who entred and made a Leaſe, and by the Entry the Lord was in in his elder Right.

So the Alienee of a Manor, after a Forfeiture committed. *Dub.* 2 *Vent.* 39.

But if the Lord dies after a Forfeiture committed, he in Reverſion, or Remainder, ſhall not take Advantage of it. *R.* 2 *Cro.* 301. 1 *Bul.* 190.

And for any Forfeiture that does not determine the Cuſtomary Eſtate, the Heir ſhall not take Advantage. *R. per* 3 *J. Lut.* 802.

As, for Waſte. *Lut.* 802. *Dub. Lat.* 227.

By a Leaſe without Licence. *Lut.* 802. 1 *Sal.* 187.

So, if two Parceners be Ladies, and one dies, the other being Heir to her Siſter ſhall not take Advantage; for ſhe cannot enter for a Moiety. *R. per* 3 *J. Lut.* 802. 1 *Sal* 187.

And upon Forfeiture for Treaſon the Lord ſhall take Advantage, not the King, unleſs by the expreſs Words of an Act of Parliament. 2 *Vent.* 39. *Vide Ante,* (M. 1.)

If a Copyholder for Life forfeits, the Lord ſhall take Advantage, not he in Remainder. 1 *Rol.* 500. *l.* 45. *R.* 9 *Co.* 107. *a, M. Podger.* 1 *Sand.* 151. *R.* 1 *Mod.* 200. 2 *Mod.* 33.

Except when the Remainder is to commence after Forfeiture, *&c.* *R.* 2 *Jon.* 189. 3 *Lev.* 94. But there it was not a Remainder but a Reverſion. *Pol.* 620. *Vide infra. Vide Poſt,* (M. 7.)

But if a Surrender be to *A.* and *B.* and the Heirs of *A.* but *B.* upon three Proclamations, according to the Cuſtom, does not come to be admitted, *A.* ſhall be admitted to the Whole, and not the Lord to a Moiety. *Dub. Yel.* 1.

So, if a Reverſion of a Copyhold be granted *Habend'* after the Death, Surrender, or Forfeiture of the Copyholder for Life; if he forfeits, the Reverſioner ſhall take Advantage, and not the Lord. *R.* 3 *Lev.* 94. *Pol.* 621. 2 *Jon.* 189.

So, if a Forfeiture be ſuch, that it determines the cuſtomary Eſtate, the Heir ſhall take Advantage of it; as, if a Copyholder makes a Feoffment, or Leaſe for Life. *R. Lut.* 803.

(M. 7.) When a Preſentment is not neceſſary.

If a Copyholder commits a Forfeiture, by Treaſon or Felony, after Attainder, the Lord may ſeiſe without Preſentment by the Homage. *R.* 2 *Vent.* 38. 2 *Jon.* 190.

Or, by Alienation. *Kit.* 90. *b.* *R. Cro. El.* 499.

Or, by Waſte. *Cont. Kit.* 90. *b.* *Semb. Acc. Lat.* 227. *R. Cro. El.* 499.

Or, by a Leaſe without Licence. *R. Jon.* 249.

So the Lord may grant a Copyhold forfeited, before Seiſure; for the Forfeiture is a Determination of the Will, of which the Lord may take Advantage. *R.* 1 *Lev.* 26.

So a Grantee *Habendum* after Forfeiture, *&c.* may enter, before Seiſure, upon an Attainder of the Copyholder. *Semb.* 2 *Jon.* 189. *R.* 3 *Lev.* 94.

But for a Forfeiture by Nonfeaſance, the Lord cannot ſeiſe without a Preſentment of the Homage; as, for not rendring Services, or Suit of Court. *Kit.* 90. *b.*

Nor, for any Perſonal Forfeiture. *R.* 4 *Leo.* 241.

(M. 8.) Diſpenſation; What ſhall be.

If the Lord makes an Admittance to the Copyholder, after a Forfeiture committed, it amounts to a Diſpenſation; for it ſhall be taken as an Entry, and a new Grant. *R.* 1 *Lev.* 26.

So, if he accepts Rent of the Copyholder. *Per Twiſd.* 1 *Keb.* 15. *Vide Condition*, (P.)

So, if a Copyholder be amerced at the Court for not coming; it will be a Diſpenſation of the Forfeiture. *R.* 1 *Leo.* 104.

Tho' the Amerciament be not eſtreated or levied. 1 *Leo.* 104.

If permiſſive Waſte be repaired before Entry, it prevents the Seiſure, as forfeited. *Per Powel, Lut.* 803.

And a Diſpenſation by him who is the rightful Lord, tho' he be only *Dominus pro tempore*, binds him in Reverſion, as well as himſelf. *R.* 1 *Lev.* 26.

But an Admittance after a Forfeiture by a Diſſeiſor, is not a Diſpenſation, as to him who has the Right. *R.* 1 *Lev.* 26.

So it ſhall be no Diſpenſation, if the Lord had not Notice; as, if he accepts Rent of a Copyholder after Waſte done, without Notice of it, he may afterwards enter for a Forfeiture. *R.* 1 *Rol.* 475. *l.* 50.

So, if the Lord accepts a Surrender of the Copyholder, after Treaſon committed. *R.* 2 *Vent.* 38.

So a Pardon of Treaſon, is no Diſpenſation. *R.* 3 *Lev.* 94. *R.* 2 *Jon.* 189.

So, if the Lord accepts a Surrender of a Copyhold after a Forfeiture committed, and before Notice of it, it is no Diſpenſation. *R. Cro. Car.* 234.

Yet the Lord ought to take Notice of a Forfeiture, by Denial of Suit of Court. 2 *Vent.* 39.

Or, Non-payment of Rent. *D.* 2 *Vent.* 39.

(N) Copyhold, When bound by a Statute.

WHEN no Prejudice enſues to the Lord by it, Copyholds are included within the general Words in any Statute, *viz. Lands, Tenements, and Hereditaments.* 3 *Lev.* 327. *R.* 3 *Co.* 8. *D. Cro. Car.* 43, 44. *Sav.* 67.

As, the *St. of Merton*, 20 *H.* 3. by which Damages are given to the Wife for being deforced of her Dower, when her Huſband dies ſeiſed, extends to Copyholds. *Cro. Car.* 43. *Vide Ante*, (K. 2.)

So, the *St. W.* 2. 13 *Ed.* 1. 3. which gives a *Cui in vitâ* upon Alienation by the Huſband of the Land of his Wife. *Cro. Car.* 43. 3 *Co.* 9. *a. Dal.* 116.

So the other Branch of *W.* 2. 3. which gives Receipt to the Wife, upon Default of her Huſband, extends to the Default of the Huſband in a Writ of Right, in a Court Baron. 2 *Inſt.* 343. 3 *Co.* 9. *a. Cro. Car.* 43.

So, the *St. W.* 2. 4. which gixes a *Quod ei deforceat* upon a Recovery by Default againſt Tenant for Life, *&c.* 3 *Co.* 9. *a. Cro. Car.* 43.

So the *St.* 4 *H.* 7. 24. whereby a Fine, with Proclamations and Non-claim for five Years, bars all Eſtates, *&c.* extends to a Cuſtomary Intereſt. *R.* 9 *Co.* 105. 1 *Brow.* 181. 2 *Inſt.* 517.

And therefore, if the Lord enfeoffs a Copyholder in Tail, who afterwards levies a Fine *Sur Conuſance, &c.* the Iſſue in Tail is barred. *R. Cart.* 23.

But if the Lord makes a Bargain and Sale to a Copyholder for Life, who afterwards levies a Fine *Sur Conuſance, &c.* and five Years paſs, he in Remainder is not barred by the *St.* 4 *H.* 7. 24. for the Remainder was not deveſted. *R.* 9 *Co.* 106. *Vide Ante*, (L.—M. 5.)

So Copyholder for three Lives *ſucceſſivè*, the firſt Life joins with the Lord in a Fine *come ceo, &c.* of the Copyhold Eſtate: it does not bar the ſecond Life. *R.* 2 *Jon.* 143. *Ray.* 403. *Pol.* 564.

So the *St.* 31 *H.* 8. 13. which avoids Leaſes for Life made by Religious Perſons within a Year before, extends to Copyholds. *R.* 3 *Co.* 8. *Mo.* 128. *Sav.* 66.

So

So the *St.* 32 *H.* 8. 9. againſt Champerty and Maintenance in the Purchaſe of Titles, *&c.* *Per Wray*, 4 *Co.* 26. *a.* *Cro. Car.* 43. 2 *Brow.* 79.

And the *St.* 32 *H.* 8. 34. which gives to a Grantee of the Reverſion, the ſame Actions and Entry for a Condition broken, as the Grantor might have, extends to the Aſſignee of a Reverſion of a Copyhold. *Cont. R.* 2 *Cro.* 305. *Yel.* 223. *Per Hob.* 178. *Dub. Cro. Car.* 25. *D. Cro. Car.* 44. *but R. acc.* 3 *Lev.* 327. *Vide Ante.* (K. 12.)

So the *St.* 32 *H.* 8. 2. of Limitations. *Mo.* 411.

So the *St.* 13 *El.* 20. which reſtrains long Leaſes made by Eccleſiaſtical Perſons. 3 *Lev.* 327.

So, the *St.* 27 *El.* 4. which reſtrains fraudulent Conveyances. 3 *Lev.* 327.

So, the *St.* 1 *Jac.* 15 *&* 21 *Jac.* 19. againſt Bankrupts; for being named by the *St.* 13 *El.* 7. the other Statutes, made in Aid and Confirmation of this, extends to Copyholds. *R. Cro. Car.* 550. *Adm. Cro. Car.* 568.

By the *St.* 13 *El.* 7. Commiſſioners may take order with Bankrupt's Lands, *&c.* as well cuſtomary as free, *&c.* And by Deed indented and inrolled make Sale of ſuch Lands, *&c.* But the Vendee ſhall not enter, nor take the Profits till he hath agreed with the Lord for his Fine, who thereupon ſhall admit him.

But the Eſtate of a Copyholder is veſted in the Bargainee, by the Bargain and Sale. *Cro. Car.* 569. *Vide Ante*, (G. 1.)

And he ſhall avoid all meſne Acts between the Sale and his Admittance; as, if the Bankrupt dies after Sale, and before Admittance of the Vendee, the Wife of the Bankrupt ſhall not have her Dower. *R. Cro. Car.* 569. *Vide Ante*, (G. 1.)

So the *St. W.* 2. 13 *Ed.* 1. *de Donis* extends to Copyholds. *R.* 3 *Co.* 8. *R.* 9 *Co.* 105. *cont. D. cont. Sav.* 67. *Vide Ante*, (C. 8.) *But it was R. acc.* 3 *Lev.* 327. *Cont.* 1 *Rol.* 838. *l.* 15. *Semb. acc.* 1 *Leo.* 175. *Dub. Cro. El.* 380. *Adm.* 1 *Sid.* 314.

(O) When not.

BUT when a Statute alters the Service, Tenure, Cuſtom, or Intereſt of the Land, to the Prejudice of the Lord, the general Words of the Statute do not extend to a Copyhold. *R.* 3 *Co.* 9. *a.* *D. Cro. Car.* 44.

And therefore, a Copyhold is not extendible upon a Stat. Merchant or Staple within the *St. of Acton Burnel*, 11 *Ed.* 1. *De Mercat.* 13 *Ed.* 1. *Mo.* 94, 128.

Nor, by the *St. W.* 2. 13 *Ed.* 1. 18. which gives an *Elegit*. *R.* 3 *Co.* 9. *a.* *Cro. Car.* 44. *Sav.* 67.

So the *St. of Glouceſter*, 6 *Ed.* 1. which gives Summons *ad warrantizandum* upon a foreign Voucher, does not extend to Copyholds. 2 *Inſt.* 325.

Nor the *St.* 23 *H.* 8. 5. which gives Authority to Commiſſioners of Sewers to ſell Lands. *Cal.* 134, 5.*

* *Callis on Sewers, Edit.* 1686.

Nor the *St.* 27 *H.* 8. 10. which transfers the Poſſeſſion to the Uſe; for it will be a Prejudice to the Lord to have the Poſſeſſion transferred by the Statute without the Allowance of the Lord. *D. Cro. Car.* 44.

Nor the Clauſe which enables to make a Jointure of Lands.

Nor the *St.* 31 *H.* 8. 1. nor the *St.* 32 *H.* 8. 32. which compel Joint-tenants and Tenants in Common to make Partition. *Cro. Car.* 44.

Nor the *St.* 32 *H.* 8. 28. which enables Tenants in Tail, and Huſband and Wife, to make Leaſes for twenty-one Years. *Cro. Car.* 44. *Dal.* 116.

Nor the *St.* 32 *H.* 8. 37. which gives Remedy to Executors or Adminiſtrators for Rent-Arrear, by Diſtreſs, or Action of Debt. *R. Yel.* 135. *Vide Ante*, (K. 12.)

Nor the *St.* 29 *El.* 6. which gives to the King, the Lands of Recuſants. *R.* 1 *Leo.* 98. *Ow.* 37. *D. Hard.* 433.

Nor the *St.* 31 *El.* 7. which prohibits the Erection of Cottages without four Acres of Land. *R.* 1 *Bul.* 52.

Nor the *St.* 12 *Car.* 2. 24. which enables the Father to diſpoſe of the Guardianſhip of his Son. *R.* 3 *Lev.* 395. *Lut.* 1190. *Vide Ante*, (K. 5.)

(P) Copyholder, how impleaded.

(P. 1.) In the Lord's Court.

A Copholder ſhall not implead, nor be impleaded for his Tenements by the King's Writ. *Lit. S.* 76.

And therefore, if he implead another for his Tenements, he ſhall have a Plaint in the Lord's Court, and make Proteſtation to ſue in the Nature of an Aſſize of *Novel Diſſeiſſin*, of an Aſſize of *Mortdanceſtor*, of a *Formedon*, or other Action at Common Law. *Lit, S.* 76. *F. N. B.* 12. *B.*

So in Nature of a Writ of Right. 3 *Leo.* 99.

Aud if an erroneous Judgment be given, a Copyholder ſhall not have a Writ of falſe Judgment, in reſpect of the Baſeneſs of his Eſtate; but he ought to ſue to the Lord by Petition. *Co. L.* 60. *a.* *F. F. B.* 12. *B.* *D*, 4 *Co.* 30. *b.* *Ca. Parl.* 67. *Mo.* 69.

So, if he he diſtrained for more Cuſtoms or Services than he ought, he ſhall not have a *Monſtraveruut*. *F. N. B.* 14. *D.* 16. *E.*

So, if a Copyholder ſurrenders to *A.* upon Truſt, and the Truſt be not performed; he may ſue to the Lord by Petition, and compel Performance of the Truſt. *R.* 1 *Leo.* 2.

And if the Lord decrees a Surrender to *A.* and the Party refuſes, the Lord may ſeiſe, and admit *A.* *R.* 1 *Leo.* 2.

(P. 2.) In *Chancery*.

But if the Lord refuſes Admittance to the Heir, or Surrenderee, the Copyholder may ſue in *Chancery*, and ſhall be there relieved. 2 *Cro.* 368. *Vide Ante*, (G. 10.)

So, if the Lord ouſts his Tenant without Cauſe.

So, if he ouſts his Copyholder for an involuntary Forfeiture. *Ca. Ch.* 96. *Vide Ante*, (M. 3.)

So, if he demands an exceſſive Fine. *Ch. R.* 464.

Or, more Services than he ought.

So, if the Lord refuſes to hold a Court to do Right to his Copyholder. *Adm. Ca. Parl.* 67. *Vide Ante*, (C. 9.)

Or, refuſes to do Right, upon a Petition to him after an erroneous Judgment. *Adm. Ca. Parl.* 67. 4 *Co.* 30. *b.*

Or, refuſes to grant Licence to make Leaſes.

So, if a Copyhold be ſurrendered to *B.* for Payment of an Annuity, or other Truſt, *Chancery* will compel the Performance.

So, if an erroneous Judgment be in a Cuſtomary Court, in an Action in the Nature of a *Formedon*; *Chancery* upon a Bill in the Nature of falſe Judgment will reverſe it. *R.* 1 *Rol.* 373. *l.* 45. *Lane* 98.

So the *Exchequer*; if it be in the King's Manor. *R.* 1 *Rol.* 539. *l.* 20. *Lane* 98.

So *Chancery* will aſcertain the Cuſtoms of a Manor between the Lord and his Tenants.

And aſcertain the Limits of Copyhold and Freehold Tenements, which are confuſed.

So *Chancery* will relieve againſt a defective Surrender. *Ca. Ch.* 171. *Vide Ante*, (F 10.)

If the Surrender be not preſented. *Ca. Ch.* 171.

If a Copyhold is agreed to be enfranchiſed, and the Freehold is conveyed to a Truſtee without a Surrender of the Copyhold to him. *R.* 1 *Ver.* 392.

If a Surrender be made into the Hands of one, and not of two Copyholders. 2 *Ver.* 164.

So, if a Surrender be refuſed. 2 *Ver.* 585.

So a Deviſe or Settlement of a Truſt of a Copyhold, ſhall be good, without a Surrender. 2 *Ver.* 585, 704.

So *Chancery* will ſupply the Default of a Surrender to the Uſe of a Will, when the Rolls are loſt, and long Poſſeſſion has been under the Will. *R.* 2 *Ca. Ch.* 151. 1 *Ver.* 195. *Vide Chancery*, (2 V.)

So, in Favour of a Purchaſer. 2 *Ver.* 165.

Or, for the Proviſion of a younger Son or Daughter. 1 *Sal.* 187.

Tho' he has ſome other Maintenance. *Ibid.*

Otherwiſe, if the eldeſt Son be thereby diſinherited. *Ibid.*

Or, it was for the Proviſion of a Grandſon, *R. in Parl.* 1 *Sal.* 187. 2 *Ver.* 625. (*Vide* 1 *P. W.* 61.)

Or, for the Proviſion of a Nephew. *R.* 2 *Ver.* 625.

So it will ſupply it for the Heir, when the Copyhold was *Gavelkind*, and charged with Legacies to the younger Children. *R.* 2 *Ver.* 165.

But *Chancery* will not relieve the Lord of a Manor, after a Sale of the Manor, for Rents or Fines due before the Sale. *R.* 1 *Rol.* 374. *l.* 45.

Nor will compel the Lord of a Manor to receive a Petition, to reverſe a Common Recovery. *R. Ca. Parl.* 68.

Vide Chancery, (2 V.)

(P. 3.) At Common Law.

So a Copyholder ſhall have Treſpaſs by the Common Law, for a Treſpaſs done upon his Copyhold. *Per Danby*, 7 *Ed.* 4. 19. *a.* 2 *H.* 4. 12. *a.*

And ſhall have it againſt his Lord, if he enters upon him without Cauſe. *Per Danby*, 7 *Ed.* 4. 19. *Per Brian*, 21 *Ed.* 4. 80. *Co. L.* 60. *b.*

Or, if he cuts down Trees, not being Timber. *R.* 1 *Leo.* 272.

So an Action upon the Caſe lies againſt the Lord, if he cuts down Timber, when by the Cuſtom it belongs to the Copyholder. *Vide Ante*, (K. 7.)

So the Leſſee of a Copyholder ſhall maintain an Ejectment at Common Law. *R.* 4 *Co.* 26, *Melwich. D. Mo.* 128, 272. *R. Mo.* 539, 569. *Per* 3 *J. cont. Cro. El.* 483. 717. *R. acc. Cro. El.* 224. 1 *Leo.* 328. *Cro. El.* 535.

Otherwiſe, if the Leſſee has not a rightful Eſtate; As, if the Leaſe be for ſeveral Years without Licence, he ſhall not have an Ejectment againſt the Lord. *D. Lit.* 234.

Nor againſt a Stranger. *Dub. Lit.* 234.

So, if a Man ouſts a Copyholder of a Manor in the King's Hands, he cannot maintain an Ejectment. *R.* 3 *Leo.* 221.

So a Copyholder cannot maintain Ejectment upon the Demiſe of the Lord by Copy. *Cro. El.* 224. 1 *Leo.* 328.

So, if a *Replevin* be upon a Diſtreſs for Rent of a Copyhold, the Defendant may avow for it in the King's Court. *R. Cro. El.* 524.

So an *Ejectione Cuſtodiæ* lies for a Guardian, appointed by the Lord of the Manor according to the Cuſtom; for he does not claim by Copy, but has an Intereſt at Common Law. *R. Cro. El.* 224. 1 *Leo.* 328.

(P. 4.) Pleading of Copyhold.

If a Man entitles himſelf to a Copyhold, he ought in Pleading to ſhew a Grant by the Lord to him. *Cro. Car.* 190. *Vide Pleader*, (E. 19.)

So, if he entitles himſelf under *A.* he ought to ſhew a Grant to *A.* *R.* 2 *Cro.* 103. *R. Cro. Car.* 190.

But it is only Form, and aided upon a general Demurrer. *Per* 3 *J. Cro. Car.* 190. *Semb. Cont.* 2 *Cro.* 103.

And if he entitles himſelf to the Reverſion after the Death of *A.* it is ſufficient to ſhew a Grant of the Reverſion, without ſhewing a Grant of the Eſtate to *A.* *R.* 2 *Cro.* 52.

It is not ſufficient, to plead that the Tenements are granted by Copy, without ſaying, *ad voluntatem Domini*. *Lut.* 1166, 1171. *R. Lut.* 126. *Semb. Cro. Car.* 229.

[Copyhold muſt be ſtated, or found, or pleaded to have been demiſeable by Copy of Court-roll Time out of Mind, or it will not be adjudged Copyhold. *Roe* v. *Newman*, *P.* 33 *G.* 2. 2 *Wilſ.* 125.]

So he cannot plead, that they are Copyhold, and deſcendible to the Heir; for that is a Contradiction. *R. upon a ſpecial Demurrer*, *Lut.* 1328.

That *A.* was ſeiſed in Fee *ſecundum Conſuetudinem Manerii*, without ſaying by Copy, or the like. *R.* 3 *Bul.* 230.

But the Omiſſion of, *ad voluntatem Domini*, ſhall be aided after Verdict. *R.* 1 *Sal.* 365.

So it is not ſufficient to plead, that the Land is demiſeable Time whereof, *&c.* without ſaying, in Fee, or for Life, *&c.* *Sav.* 131.

That the Copyhold was granted by the Steward, without naming him. *Ibid.*

The Form of pleading an Admittanee to a Copyhold, *Vide Co. Ent.* 575. *b.*

Of a Surrender and Admittance thereupon, *Co. Ent.* 645. *d.*

Of a Surrender by an Huſband and Wife, 3 *Lev.* 147. *Co. Ent.* 576. *b.*

Of a Surrender to the Uſe of a Will, *Lut.* 759, 794.

To two Tenants, 3 *Lev.* 128. *Co. Ent.* 575. *b.*

By Attorney, *Lut.* 760.

To the Lord out of the Manor, *Lut.* 677.

Of a Grant and Admittance to a Reverſion, *Co. Ent.* 184, 185.

If a Copyholder claims Common, or other Profit, *in alieno ſolo*, he ought to preſcribe in the Name of the Lord. *R.* 4 *Co.* 31. *b*, *Foiſton*. *Cro. El.* 390. *Mo.* 461. *Lut.* 1327. 1 *Sal.* 170.

But if he claims it within the Manor, he ought to alledge it by way of a Cuſtom; for he cannot preſcribe in himſelf, for the Baſeneſs of his Eſtate. *R.* 4 *Co.* 31. *b*. *Cro. El.* 390. *Mo.* 461. *Lut.* 1326. *R.* 6 *Co.* 60. *b.*

And therefore, if he alledges a Cuſtom within his Manor, *quod quilibet Tenens Cuſtomar'* of ſuch a Tenement ſhall have Common of Eſtovers in another Manor, it is bad. *R. Dy.* 363. *b.* 4 *Co.* 31. *b.*

But if a Copyholder pleads a Leaſe, it is not neceſſary to plead a Cuſtom; for it ſhall be intended purſuant to the Cuſtom, if the contrary be not ſhewn on the other Side. *D.* 1 *Leo.* 100.

So he may plead a Demiſe for a Year, without a Licence. *Co. Ent.* 576. *a.* *Win. Ent.* 998.

But a Demiſe for ſeveral Years ſhall be pleaded with a Licence. *Co. Ent.* 185. *a.*

If a Copyholder alledges a Cuſtom, it is more proper to ſay poſitively, *Quod infra manerium talis habet' Conſuetudo, &c.* *Semb. Lut.* 1188, 9.

Yet it is ſufficient to ſay, *Eo quod ſecundum Conſuetudinem. &c.* *R. Lut.* 1190.

Or, *Quod cum per Conſuetudinem Manerii habere debeat.* *R.* 1 *Sal.* 365, after a Verdict.

If a Copyholder alledges a Cuſtom within the Manor for Common, *&c.* it is not neceſſary to ſay, what Eſtate they have in their Tenements; for be it for Life, for Years, or in Fee, the Common, *&c.* belongs to them for the Time. *R.* 2 *Saund.* 326.

So it is not neceſſary to ſay, that Common belongs *ad Statum Cuſtomarium*; for, *ad Tenementa ſua prædicta ſpectant.* is ſufficient. *R.* 1 *Sal.* 366.

(Q) Manor.

(Q. 1.) What ſhall be.

ALL Copyholds, regularly, are Parcel of a Manor. *Vide Ante*, (B. 2.)

A Manor commenced, where the King granted Lands with Juriſdiction to another, who before the *St. Quia Emptores terrarum* granted Parcel of them to others, to hold of him by certain Services. *Co. L.* 58.

Every Manor conſiſts of Demeſnes and Services.

If

If Parceners make Partition of a Manor, and Parcel of the Demeſnes and Services are allotted to one, and Parcel to the other; each has a Manor. 2 *Rol.* 122. *l.* 15.

And if, by Deſcent the Part of one comes to the other, it ſhall be one Manor again. 2 *Rol.* 122. *l.* 25.

So, if a Manor extends to *A.* and *B.* and he grants the Demeſnes and Services in *A.* The Grantee has a Manor, and the Grantor has another Manor in *B.* *Per* 2 *J. Cro. El.* 19. *Per* 2 *J. Periam cont. Cro. El.* 39 *Ow.* 138.

So a Manor may be Parcel of another Manor, and held of it. 1 *Bul.* 54.

So it may be held of another, by Copy, *Vide Ante*, (C. 1.)

(Q. 2.) What is Parcel of a Manor.

The Demeſnes are Parcel of a Manor.

So Rents and Services. 2 *Rol.* 120.

So a Rent-ſeck may be Parcel of a Manor; for it may have a lawful Commencement, by Releaſe from the Lord to the Tenant, reſerving the Rent, or by Purchaſe of the Tenancy by the Lord *paramount*. 2 *Rol.* 120. *l.* 25.

So, Rent for Owelty of Partition. 2 *Rol.* 120. *l.* 30.

If a Man makes a Gift in Tail, or a Leaſe for Life or Years of Part of the Demeſnes of a Manor; the Reverſion continues Parcel of the Manor. *Co. L.* 324. *b.* *Win.* 46. *R. Cro. Car.* 308.

So, if he leaſes all the Demeſnes for Life, or Years, rendring Rent; the Reverſion is Parcel of the Manor. 2 *Rol.* 120. *l.* 50.

So, if he grants an Advowſon, *&c.* for Life; the Reverſion continues Parcel of the Manor. 2 *Rol.* 121. *l.* 2.

If Huſband and Wife join in a Leaſe for Life of Part of the Wife's Manor; the Reverſion continues Parcel, for the Wife's joining prevents a Diſcontinuance. 2 *Rol.* 120. *l.* 45.

If a Biſhop makes a Leaſe for Life, not warranted by Statute; the Reverſion is Parcel of the Manor, for the Leaſe makes no Diſcontinuance. *R.* 2 *Rol.* 121. *l.* 25.

So, if the Lord leaſes the whole Manor for Years, except one Acre; this is Parcel of the Manor. *Co. L.* 325. *a.* *R.* 5 *Co.* 11. *b.* *Cro. El.* 522. *Dub. Pl. Com.* 104.

So, if he leaſes an Acre for Years, and afterwards leaſe the whole Manor for ſeveral Years; this Acre paſſes as Parcel, without Attornment of the Leſſee. 2 *Rol.* 121. *l.* 15.

So, if Parceners continue a Reſidue of the Manor in Parcenary, but divide Part of the Demeſnes; they continue Parcel of the Manor. *Sav.* 113.

(Q. 3.) What is not a Manor.

But a Manor cannot begin at this Day. 2 *Rol.* 120. *l.* 10. *Cro. El.* 39.

And therefore, if a Man makes Gifts in Tail, *&c.* rendring Rent, and Suit at Court, it ſhall not be a Manor; for he cannot make a Court, tho' the Tenure is good. 2 *Rol.* 120. *l.* 15.

If the King grants, rendring Rent, *tenend.* of his Manor of *G.* The Services are not Parcel of his Manor. *Cro. El.* 39.

(Q. 4.) What is a Severance of a Manor.

So Land held in Fee of a Manor is not Parcel of a Manor, but the Rent and Services only. 2 *Rol.* 120. *C.*

So an Annuity cannot be Parcel of a Manor. 2 *Rol.* 120. *l.* 20.

Nor a Rent-charge. *Co. El.* 150. *b.*

So, if the Lord makes a Gift in Tail, or leaſes the Manor for Life, ſaving one Acre, this being ſevered from the Freehold does not remain Parcel of the Manor. *Co. El.* 325. *a.* 5 *Co.* 11. *b.*

So

So if he leaſes the Manor for Life, except the Advowſon, &c. it is not Parcel of the Manor. 2 *Rol.* 121. *l.* 5. 5 *Co.* 11. *b.*

So, if Huſband and Wife ſeiſed of the Wife's Manor make a Leaſe of Part for Life, and afterwards grant the Reverſion to the Leſſee, it will be ſevered from the Manor. 2 *Rol.* 121. *l.* 10.

So, if Tenant in Tail makes a Leaſe for Life of a Tenement, Part of his Manor, not warranted by the Statute; it is ſevered from the Manor, for it makes a Diſcontinuance. *R.* 2 *Rol.* 121. *l.* 35. *Win.* 46.

If there be a Partition, and one has the Demeſnes of the Manor, and the other the Services, the Demeſnes are ſevered from the Manor. *Sav.* 113.

Or, where one has the Manor, the other an Advowſon, Villein, &c. theſe are ſevered. *Ibid.*

So, if the Wife of the Lord of the Manor demands, and recovers Dower, by the Name of the third Part of *tot Meſſuag' tot acr. Terr'*, &c. ſhe ſhall not have any Manor. *Ow.* 4.

Tho' the Sheriff delivers to her Seiſin of the third Part of the Demeſnes, and Services; for as to the Services, it is void. *R. Ow.* 4.

So, if there be an Extent of *tot acr' Terr'*, &c. neither the Manor, nor any Thing appendant paſſes. *Ow.* 4.

If an Advowſon, Acre of Land, &c. be ſevered from the Manor, tho' they be regranted, they ſhall never afterwards be appendant. 2 *Mod.* 2. *Vide Appendant and Appurtenant*, (D.)

(Q. 5.) Manor, how deſtroyed.

If all the Freeholds eſcheat to the Lord, the Manor is extinct; for there cannot be a Manor, without a Court Baron, nor a Court, without two Suitors at leaſt. 2 *Rol.* 122. *l.* 2, 5.

So, if the Lord purchaſe all of them in Fee. 2 *Rol.* 122. *l.* 2.

So, if all the Services are extinct, the Manor fails. *Yel.* 191.

So, if a Manor deſcends to Parceners, and upon Partition all the Demeſnes are allotted to one, and all the Services to the other; the Manor is gone. 2 *Rol.* 122. *l.* 10. *Per* 3 *J.* 1 *Leo.* 204.

(Q. 6.) How revived.

But where the Severance which deſtroys a Manor is by Act of the Law, it may be revived: As, if the Demeſnes are allotted to one Parcener, and the Services to the other, and one dies without Iſſue, whereby her Part deſcends to her Siſter, the Manor ſhall be revived. 2 *Rol.* 122. *l.* 10, 25. 1 *Leo.* 204.

(Q. 7.) How it ſhall be pleaded.

If a Man pleads, that he or another is ſeiſed of a Manor, he ought to alledge the Name of the Manor, and it is not ſufficient to ſay, that he was ſeiſed of a Manor in ſuch a Pariſh. *R.* 2 *Lev.* 178.

(R. 1.) Court-Baron.

TO every Manor a Court-Baron is incident. *Co. L.* 58.

And therefore, in a *Quo Warranto* for holding a Court-Baron, it is ſufficient to plead, that he has a Manor. 1 *Bul.* 54. 2 *Cro.* 260.

And if he pleads, that he has a Manor, he ought not to preſcribe for holding a Court-Baron. *R. Noy* 20.

So, if he grants a Manor, the Court-Baron paſſes as incident.

Tho' he excepts all Courts; for the Exception is void, unleſs in the Caſe of the King. *R. Mo.* 870.

And the Profits of Courts may be excepted by a common Perſon. *Ibid.*

So, if the Court of a Manor preſcribes for Suit *bis in Anno*, it may be a Court-Baron. *Sal.* 604.

But there cannot be a Court-Baron without Freeholders. *Co. L.* 58. *a.*

And therefore, where a Manor is granted by Copy, it may have a Cuſtomary Court, but ſhall not have a Court-Baron. *R.* 2 *Cro.* 260. *Yel.* 190.

(R. 2.) Cuſtomary Court.

So a Manor has a Cuſtomary Court, as well as a Court-Baron. *Co. L.* 58. *a.*

And this concerns the Copyhold Tenants only. *Ibid.*

And may be held without Freeholders. *Ibid.*

If a Manor has a Court of a double Nature, *viz.* Cuſtomary and Court-Baron, the Proceedings of both may be entred in the ſame Roll. *Ibid.*

But there cannot be a Cuſtomary Court without Copyholders. *Ibid.*

(R. 3.) Who ſhall be Judge.

In a Court-Baron the Freeholders are the Judges. *Co. L.* 58. *a.*

Tho' it be upon a Writ of *Right Patent*, directed to the Lord, or his Bailiffs, *Quod Rectum teneant*. *R. Mo.* 1.

But in the Cuſtomary Court the Lord or his Steward is the Judge. *Co. L.* 58. *a.*

(R. 4.) In what Place it ſhall be held.

The Court-Baron ought to be held within the Manor, otherwiſe it will be void. *Co. L.* 58. *a.*

But, by Cuſtom, the Lord may hold a Court, within one Manor, for ſeveral Manors. *Co. L.* 58. *a.* *Cro. Car.* 367.

So a Surrender may be made out of the Manor. *Vide Ante*, (F. 2, &c.)

So, an Admittance by the Lord himſelf, tho' not by the Steward. *Vide Ante*, (G. 7.)

So a Court may be held in the Night, *poſt occaſum Solis*. *R. Mo.* 68.

(R. 5.) Steward.

(R. 5.) How retained.

A Steward ought to be *fidelis, diſcretus, &c.* *Fleta, lib.* 2. *cap.* 66. *Co. L.* 61. *b.*

And may be retained by Deed, or by *Parol*. *Co. L.* 61. *b.* *R. Dy.* 248. *a.*

A Retainer by *Parol* may be for a Court-Leet, as well as for a Court-Baron. *Co. L.* 61. *b.*

A Retainer by *Parol* continues till it be diſcharged. *Ibid.*

A Steward may make a Deputy.

And a Grant to an Infant to be Steward *per ſe, vel Deputat'*, will be good. *Cont. Co. L.* 3 *b.* *Cro. El.* 637. *R. acc. Cro. Car.* 279. *Jon.* 310. *R.* 2 *Jon.* 126. *Vide Enfant*, (C. 1.) *Vide Officer*, (B. 3.)

So a Grant in Reverſion ſhall be good. *R.* 2 *Jon.* 126.

Or, a Grant to two. *R.* 2 *Jon.* 127.

Or, a Grant for Years, if the Grantee ſo long live. *Ibid.*

So a Grant of a Stewardſhip of Courts Leet and Baron ſhall be good for the Court-Baron; tho' it would not for the Leet. *R.* 2 *Jon.* 126. 2 *Lev.* 245.

Who is a ſufficient Steward to make a Grant, *&c.* *Vide Ante*, (C. 5.)

(R 6.) The Duty of the Steward.

A Steward may make a Grant or Admittance, or take a Surrender of Copyholds. *Vide Ante*, (C. 5.—F. 3.—G. 6, 7.)

(R. 7.) The Form of holding the Court.

(R. 7.) Precept for it.

The uſual Method of holding a Court-Baron, or Leet is, that the Steward makes a Precept to give reaſonable Warning of the Court. *Kit.* 6. *a.*

Warning

Warning for fifteen Days is beſt, which is the common Time between the *Teſte* and Return of a Writ in *C. B. Kit.* 6. *a.*

But ſix or ſeven Days is ſufficient. *Ibid.*

A Precept to warn a Court. *A. B. Seneſchallus Ballivo Manerii prædicti Salutem. Tibi præcipio & pariter mando quod diligenter præmonire facias Viſum Franc' Pleg' cum Curia Baron' ibidem tenend' erga diem Jovis videlicet* 12^m^ *diem Octobris prox' futur' poſt Datum præſent' Et habeas ibi hoc præcept' & qualiter, &c. Dat' ſub Sigillo meo* 1° *die hujus Menſis Octobris Anno Regni, &c.*

(R. 8.) Stile of the Court.

The Stile of the Court contains the Time and Place, and before what Steward it is held. *Kit.* 6 *b.* 53. *b.*

The Stile of a Court. *Viſus Franc' Pleg' cum Curia Baron' J. B. Militis Domini Manerii prædict' ibidem tent'. die Jovis videlicet* 12° *die Octobris Anno Regni, &c. Fidei Defenſoris, &c.* 19° *coram A. B. Arm. Seneſchallo ibidem.*

(R. 9.) Proclamation.

After the Stile of the Court is entred, the Steward cauſes the Bailiff to make Proclamation by *O yes. Kit.* 6 *b.* 53. *b.*

None can make Proclamation, but by Authority of the King, or by Cuſtom. *Kit.* 6. *b.*

At the Adjournment of a Term, or other Matter for the King, three Proclamations ſhall be made at the Beginning. *Ibid.*

And therefore, at the Beginning of a Court-Leet, which is the King's Court, three *O yes* ſhall be made. *Ibid.*

At the Beginning of a Court-Baron but one. *Ibid.*

R. 10.) Eſſoigns, &c.

After Proclamation made, the Suitors, or Reſiants, ſhall be called. *Kit.* 6. *b.* 53. *b.*

Then Proclamation ſhall be made *de novo*, and afterwards the Steward ſhall ſay, *If any one will be eſſoigned or enter Plaint let him come in. Kit.* 7. *a.* 53. *b.*

And he may be eſſoigned by Attorney. 1 *Leo.* 104.

(R. 11.) Enqueſt.

After Eſſoigns, and Plaints entred, the Enqueſt ſhall be impanelled and ſworn. *Kit.* 7. *a.* 53. *b.*

(R. 12.) Charge.

After the Enqueſt ſworn, and the Proclamation *de novo*, the Steward gives a Charge to the Enqueſt. *Kit.* 7. *b.* 53. *b.*

The Charge admoniſhes them to preſent Suitors, who make Default in doing Suit. *Vide Kit.* 54. *b.*

2. The Death of every Tenant, and who is Heir, and what Profit accrues to the Lord by his Death, *viz.* Relief, Heriot, *&c. Vide Kit.* 55. *a.*

3. Forfeiture of any Tenant by Alienation, Waſte, *&c. Ibid.*

4. Subſtraction of Lands, or Services, from the Lord. *Vide Kit.* 55. *b.*

5. Incroachment or Treſpaſs in his Demeſnes, or Waſte. *Vide Kit.* 57. *a.*

6. Incloſure or Sur-charge, *&c.* of Common. *Vide Kit.* 57. *b.*

Vide Kit. 54. *b*, *&c.*

(R. 13.)

(R. 13.) Jurisdiction.

(R. 13.) In Actions Personal. When allowed.

A Court-Baron may hold Plea of Actions Personal, where the Debt or Damages are under 40*s*. *Noy* 20. *Vide Kit*. 74. *b*.

As, in Debt. *Vide Kit*. 74. *a*.

So, in Debt upon Bond under 40*s*. *Vide Kit*. 75. *a*.

So, in an Action upon the Case under 40*s*. *Vide Kit*. 76. *a*.

So, in *Detinue* of Goods. *Vide Kit*. 74. *b*.

So, in Trespass, without *vi & armis*, under 40*s*. *Vide Kit*. 74. *a*.

So an Action lies there by the Lord himself; for the Suitors are the Judges. *Ibid*.

So, by a Stranger, who comes into the Manor. *Vide Kit*. 74. *b*.

(R. 14.) When not.

But a Court-Baron cannot hold Plea of Common Right, above 40*s*. *Vide County*, (C. 8.)

And if it does by Prescription, it is not properly a Court-Baron, but a Court of Record, and Error will lie upon a Judgment there. *Noy* 20.

So it cannot divide a Debt into several Plaints, each under 40*s*. *Vide Kit*. 74. *a*.

So Trespass does not lie there *vi & armis*. *Vide Kit*. 74. *b*. 75. *b*.

Nor Trespass by *Justicies*; for it cannot be directed to the Steward. *Vide Kit*. 74. *b*.

So, in Trespass without *vi & armis*, if the Defendant pleads Freehold, the Court cannot proceed. *Vide Kit*. 74. *a*.

Or, if he pleads, that the Plaintiff is his Villein. *Ibid*.

So Accompt does not lie in a Court-Baron. *Vide Kit*. 74. *b*.

Nor *Detinue* of Charters. *Vide Kit*. 74. *a*. 75. *b*.

Nor *Replevin*, except where the Lord claims it, by Charter or Prescription. *Kit*. 74. *b*.

Nor Waste. *Vide Kit*. 76. *a*.

Nor Ejectment of Ward. *Ibid*.

Nor *Ejectione firmæ*. *Ibid*.

Nor Assize. *Ibid*.

Nor *Quare impedit*, or other mixt Action. *Ibid*.

Nor an Action upon any Statute. *Ibid*.

If an Action be sued in a Court-Baron, in which it has no Jurisdiction, Prohibition may be sued. *Vide Kit*. 74. *a*. 75. *a*.

So, if a Plea be pleaded which ousts the Jurisdiction there. *Vide Kit*. 75. *a*.

So, if the Defendant pleads, that the Cause of Action did not arise within the Jurisdiction, and the Plea is disallowed, upon *Affidavit* a Prohibition shall go. *Vide Kit*. 74, 75, *&c*.

So, to Trespass *vi & armis*, a *Supersedeas* may be granted. *Vide Kit*. 75. *b*.

So, if it has no Jurisdiction, the Proceeding there is void, and Trespass lies. *Ibid*.

(R. 15.) In Actions to Land. Freehold.

So in a Court-Baron a Writ of *Right Patent* may be sued, directed to the Lord, or, if he be out of the Realm, to his Bailiff, to do Right, where his Tenant in Fee loses by Default, or dies seised, and a Stranger abates.

When it lies, and of what Thing, or not, *Vide Droit*, (B. 1, 2.)

And if the Lord refuses to hold a Court, or to receive the Writ, or to do Right, a Writ may be sued against him by the Demandant to command him so to do. *F. N. B*. 3 *E*.

And hereupon he may have an *Alias Pluries*, and Attachment. *F. N. B*. 3. *E*.

Or Demandant may remove the Plea out of the Court-Baron by *Tolt* to the County, and by *Pone* from the County to *C. B*. without Cause alledged. *F. N. B*. 3. *F*.

So the Tenant, with Cause, may remove it by *Recordari*. *F. N. B*. 4. *A*.

But if a Court-Baron holds Plea of Freehold without Writ, the Judgment and Execution thereupon ſhall be void, and he who enters upon ſuch Execution will be a Diſſeiſor. *Kit.* 74. *b.*

And by the *St. de Marl.* 52 *H.* 3. 22. *Nullus poſſit diſtringere liberos Tenentes ad reſpondend' de libero Tenement' aut de aliquibus ad liberum Tenementum ſpectan' ſine Brevi Domini Regis.*

So the Lord after, or before a Writ directed to him, may give a Licence to his Tenant to ſue a Writ of Right in *C. B.* whereupon he ſhall have Right *Quia Dominus remiſit Curiam.* *F. N. B.* 2. *F.* *Vide Droit,* (B. 1.—C. 2.)

Or, if ſuch Clauſe be omitted, the Lord may certify his Aſſent by Letter to the King in *Chancery.* *F. N. B.* 3. *A.*

Or, if the Tenant ſues in *C. B.* without ſuch Letter or Clauſe and recovers, it ſhall be good, and the Lord or Tenant cannot avoid it. *F. N. B.* 3. *B.*

So if a Writ of *Right Patent* be ſued in a Court-Baron, and the *Miſe* joined upon *Battail,* or to be tried by the Grand Aſſize, the Court cannot proceed. *F. N. B.* 4. *E.*

Or, if a foreign Plea be pleaded. *F. N. B.* 4. *E.*

If the Court-Baron proceeds after a foreign Plea pleaded, or the *Miſe* joined upon the Grand Aſſize, a Prohibition goes. *F. N. B.* 4. *E.*

So a Copyholder ſhall implead, or be impleaded for his Tenements, by Plaint in the Nature of a Real Action in the Court-Baron; for he cannot implead by the King's Writ. *Lit. S.* 76. (R. 16.) Copyhold.

And therefore, he may make Plaint *de placito Terræ,* with Proteſtation to ſue in the Nature of a *Formedon, Mortd'anceſtor, Aſſize, &c.* *Ibid.*

Or, in Nature of a Writ of Entry *in the Poſt*; and ſhall proceed thereupon as in ſuch Action at Common Law. *Mo.* 68.

The Form of Proceeding in *Right Patent, Vide in Droit,* (B. 1, &c.)

(R. 17.) Trial.

In a Court-Baron all Pleas of Common Right ought to be determined by Wager of Law. 2 *Inſt.* 143. *Vide County,* (C. 11.)

But by Preſcription, a Trial may be by Jury. 2 *Inſt.* 143.

Or, *ex aſſenſu Partium.* *Bro. Trial* 143.

(R. 18.) Execution.

If a Recovery be in the Court of the Manor in a Perſonal Action, the Plaintiff ſhall not have Execution by *Capias ad Satisfaciendum*; for that does not lie in a Court-Baron. *Kit.* 115. *b.* (R. 18.) In Perſonal Actions.

Nor by *Elegit*; for that was given by the *St. W.* 2. 18. *Vide Kit.* 115. *b.*

Nor, regularly by *Fieri facias,* or *Levari facias.* *Vide Kit.* 115. *b.*

But the Plaintiff upon a Precept from the Steward, regularly, ought to diſtrain the Goods of the Defendant, and hold them in the Nature of a Diſtreſs, till he ſatisfies the Condemnation. 1 *Sal.* 221. *Vide Kit.* 115. *b.*

And he cannot ſell the Diſtreſs, tho' it be the King's Manor. *R.* 2 *Cro.* 255.

Or, by Cuſtom, he may take Execution by *Levari facias,* and appraiſe the Goods, and ſell them. *Kit.* 115. *b.* *Lut.* 1413. 1 *Sal.* 201.

Or the Lord may preſcribe to ſell the Goods, upon an Execution. *Noy* 20.

So, in an Action for Copyhold Lands, purſued in the Nature of a real Action at Common Law, Execution ſhall be by Precept from the Steward to the Bailiff to deliver Seiſin. *Kit.* 254. *b.* (R. 19.) In Real.

But *C. B.* will not aid a Court-Baron, with Proceſs to put the Party into Poſſeſſion with a *Poſſe Manerii.* *R.* 3 *Leo.* 9.

So, if a Judgment there be removed by *Certiorari* to *B. R.* Execution ſhall not be awarded thence. *R.* 1 *Lev.* 134.

How Error ſhall be redreſſed, *Vide Ante*, (P. 1, 2.)

(S) Cuſtom; The Nature of it.

(S. 1.) Muſt be alledged in a particular Place.

WHAT a Copyholder may, or ought to do, or not, the Cuſtom of the Manor directs. *Co. L.* 63. *a.*

Every Cuſtom is local, and ſhall be alledged not in the Perſon, as a Preſcription, but in the Manor, or other Place. *Co. L.* 113. *b.*

And it is *Lex loci*; for in ſuch a particular Place it binds the Perſons, or Things concerned, as another Law. *Dav.* 31. *b.*

Cuſtom may be alledged in a Manor, or other particular Place. *Co. L.* 113. *b.*

In a City, or Burrough. *Kit.* 105. *a.*

In a Vill, not Burrough or Corporate. *Ibid.*

So, in a County; as *Gavelkind*. *Ibid.*

In a Hundred, or County, as the *Weld of Kent*, *&c.*

But it cannot be alledged for the whole Kingdom; for that is the Common Law. *Kit.* 105. *a.*

(S. 2.) Muſt be Time out of Mind.

To every Cuſtom there are two inſeparable Incidents, Time, and Uſage. *Co. L.* 113. *b.* *Vide Præſcription*, (E. 1.)

And therefore, continual Uſage, and Practice, from Time whereof no Memory is to the contrary, makes a Cuſtom. *Dav.* 32. *a.*

But a Cuſtom cannot be eſtabliſhed by the King's Grant. *Ibid.*

Nor, by Act of Parliament. *Ibid.*

(S. 3.) Muſt be reaſonable.

(S. 3.) What ſhall be ſo.

Every Cuſtom, that is not contrary to Reaſon, may be allowed. *Co. L.* 62. *a.* *Vide Præſcription*, (E. 4.)

(S. 4.) Tho' contrary to a Rule of Law.

A Cuſtom may be reaſonable, tho' it be contrary to a Rule, or Maxim of Law. *Dav.* 32. *a.*

As, the Cuſtom of *Gavelkind*, that all the Sons ſhall inherit. *Dav.* 32. *a.* *Lit. S.* 210. *Vide Gavelkind.*

Or, *Burrough Engliſh*, that the Youngeſt Son ſhall inherit. *Co. L.* 140. *b.*

Or the Youngeſt Son, if he be not of the half Blood. *Ibid.*

Or the Eldeſt Daughter, or Siſter, *&c.* *Co. L.* 140. *b.* *Vide Ante*, (K. 4.) *Vide Burrough Engliſh.*

So a Cuſtom, that a Feoffment by Tenant in Tail with Warranty, ſhall not make a Diſcontinuance. *Dav.* 30. *a.* 1 *Rol.* 562. *l.* 47.

That the Wife ſhall not have Dower, where ſhe receives Money upon Sale of the Land. *Dav.* 30. *b.* 1 *Rol.* 562. *l.* 50.

That a Widow, if ſhe marries, ſhall not have Dower. 1 *Rol.* 562. *l.* 52.

That a Leaſe for Years, by a Copyholder, ſhall determine with his Life. *R. Hut.* 101.

That an Infant, at the Age of fifteen, may make a Feoffment. 1 *Rol.* 567. *K.*

That he may bind himſelf Apprentice. 1 *Rol.* 567. *l.* 12.

(S. 5.) Tho' contrary to a Statute.

So a Cuſtom may be reaſonable, tho' there be a general Proviſion by Statute to the contrary, if the Cuſtom is not expreſly taken away; as, a Cuſtom that a Tenant within the *Cinque Ports* ſhall not be in Ward. *Dy.* 288, 289. *Pal.* 543. *Vide Præſcription*, (F. 3.)

So a Cuſtom ſhall be reaſonable, if it be for the Common Benefit, tho' it tends to the Prejudice of a particular Perſon. *Dav.* 32. *b.* (S. 6.) If for a common Benefit, tho' it tends to a particular Prejudice.

As, a Cuſtom to make a Bulwark for the Defence of the Realm, upon the Land of another. *Ibid.*

Or to dry his Nets upon the Land of another. *Ibid.*

So, to turn his Plow upon the Headland of another; for it is for the Benefit of Agriculture. *Dav.* 30. *a.* 32. *b.*

So, that a Searcher ſhall deſtroy all corrupt Victual, which ſhall be put to Sale within a Manor. *Per* 3 *J. North dub.* 1 *Mod.* 202. 2 *Mod.* 56.

So a Cuſtom ſhall be reaſonable, which may have had a reaſonable Commencement, tho' otherwiſe it would be unreaſonable. *Vide Poſt,* (S. 10.) (S. 7.) If it may have had a reaſonable Commencement.

As, a Cuſtom, that every Tenant of a Manor ſhall pay 3 *l.* for a Pound-breach, tho' it would not be good for a Stranger; for the Lord may give his Tenements upon ſuch Terms. *Kit.* 104. *b.* *Vide Poſt,* (S. 13.)

That every Tenant, who holds Land in *Villenage,* ſhall pay a Fine upon the Marriage of his Daughter. *Kit.* 104. *b.* *Co. L.* 140. *a.*

That one ſhall have Liberty to plow, and ſow, and after the Corn is carried away, another ſhall have the Land as his Several. *Kit.* 104. *b.*

That a Commoner ſhall not put Cattle upon the Common, after the Corn is carried away, till *Michaelmas.* *Kit.* 105 *a.*

That every Ship ſhall pay ſo much *per Ton* of all Merchandiſe, in ſuch an Haven. 1 *Sid.* 18.

[A Cuſtom may be good, tho' it tends to diminiſh the Value of the Lord's Eſtate. *Fawcet* v. *Lowther, T.* 1751. 2 *Vezey* 300.]

So a Cuſtom may be reaſonable, tho' the Right of another be reſtrained: As, a Cuſtom in Reſtraint of Trade in ſome Reſpects. *Vide Trade,* (D. 2.) (S. 8.) Tho' the Right of another be reſtrained.

A Cuſtom, that a Lord may have a Bakehouſe for his Tenants in the Vill, and that none elſe ſhall bake there to ſell. *R.* 1 *Rol.* 559. *l.* 20.

That all the Inhabitants of a Vill ſhall grind the Grain they uſe there, at his Mill. *R.* 1 *Rol.* 559. *l.* 40.

[But a Cuſtom to grind all Corn, Grain or Malt, which a Man ſhall have occaſion to uſe or ſpend, at the Mill of *A.* is unreaſonable; for it may extend to Corn for Horſes, and at whatever Diſtance the Tenant may live. *Ld. Uxbridge* v. *Staveland, M.* 1747. 1 *Vezey* 56.]

[A Cuſtom for all thoſe who have any Land in a common Field to incloſe as much thereof as they pleaſe, is good. *Barber* v. *Dixon, H.* 17 *G.* 2. *Wilſ.* 44.]

So a Cuſtom in general Words ought to have a reaſonable Conſtruction; as, to diſtrain all Things upon the Land, ſhall be intended of all Things diſtrainable. 1 *Sid.* 18. (S. 9.) If in general Words.

But a Cuſtom is not reaſonable, which cannot have had a reaſonable Commencement. *Dav.* 32. *a.* *Vide Ante,* (S. 7.) (S. 10.) What is not reaſonable. If it cannot have had a reaſonable Commencement.

For a Cuſtom need not have a lawful Commencement, as a Preſcription, but ought to be reaſonable in its Commencement. 6 *Co.* 60. *b.*

And therefore, the Cuſtom of *Taniſtry* in *Ireland,* that Land ſhall go *Seniori & Digniſſimo* of the Blood and Surname, is unreaſonable; for it commenced by Power of the moſt Potent. *R. Dav.* 34. *b.*

So a Cuſtom, contrary to the Law of God, is not reaſonable. *Vide Kit.* 105. *a* (S. 11.) If contrary to the Law of God.

Nor a Cuſtom, contrary to the King's Prerogative; for *Nullum Tempus occurrit Regi. Dav.* 33. *b.* *Vide Præſcription,* (F. 1.) (S. 12.) Or, contrary to the King's Prerogative.

As, a Cuſtom to make a Corporation. *Dav.* 33. *b.*

So a Cuſtom, that Goods diſtrained within a Manor for the King's Debt, ſhall be brought to the Lord's Pound for three Days, and if the Debt in that Time be paid, they ſhall be reſtored. 1 *Rol.* 566. *l.* 30.

So

So a Cuſtom to retain Goods pledged till the Money lent be ſatisfied, does not extend to the Jewels of the Crown. *Dav.* 33. *b.*

So, if a Man has Wreck, Eſtrays, Toll, *&c.* it does not extend to the Goods of the King. 1 *Rol.* 566. *l.* 37.

(S. 13.) If it be to a general Prejudice, for the Advantage of a particular Perſon.

Nor, a Cuſtom to the general Prejudice, for the Advantage of any particular Perſon. *Dav.* 33. *a.*

As a Cuſtom, that no Commoner ſhall put his Cattle on the Common till the Lord has put his Cattle there. *Dav.* 32. *b.*

That no Tenant ſhall marry his Daughter, till he pays a Fine to the Lord, *Dav.* 33. *a.* *Lit. S.* 209.

That the Lord ſhall take the Cattle of a Stranger *levant* and *couchant* upon the Land, for his Heriot. *Dav.* 33. *a.* *Vide Ante*, (K. 25.)

Or ſhall take 3 *l.* of every Stranger for a Pound-breach. *Dav.* *Vide* 33 *a.* *Ante.* (S. 7.)

That a Tenant ſhall be amerced, if he does not put his Cattle in the Lord's Pound. *Dav.* 33. *a.* *R.* 21 *H.* 7. 20.

That a Man, who does not pay as much as is due to the Church, ſhall forfeit ſo much to the Lord of the ſame Vill. 21 *H.* 7. 20.

That a Tenant fiſhing in the Sea near his Land, unleſs in the Lord's Boat, ſhall pay ſo much to the Lord. *Vide* 21 *H.* 7. 20.

(S. 14.) Or, to the Prejudice of any, where there is not an equal Prejudice or Advantage to others.

Nor, a Cuſtom to the Prejudice of any one, where there is not an equal Prejudice or Advantage to others, in the ſame Caſe; as, that the Sheep of ſeveral Owners, upon the ſame Tenement, ſhall be counted *inſimul*, and decimated; for one may pay all his Lambs for Tithes, and another nothing. *R. Heb.* 329.

(S. 15.) If the Cuſtom be, that any one ſhall be Judge for himſelf.

Nor, a Cuſtom, that any one ſhall be Judge for himſelf; as, that the Lord ſhall detain a Diſtreſs taken upon his Demeſnes, till Fine made for the Damage, at his Will. *Dav.* 33. *a.* *Lit. S.* 212.

(S. 16.) If it be againſt Common Right.

Nor a Cuſtom againſt Common Right; as, that a Man ſhall have Warren in Land not held of him. *Kit.* 104. *b.*

That every Tenant of the Manor ſhall impound Cattle in the Lord's Pound, for he may impound upon his own Land. *Kit.* 105. *b.*

That if a Tenant ceaſes for two Years, the Lord ſhall enter till he agrees for the Arrears; for the Tenant will be ouſted of his Inheritance without Action. 1 *Rol.* 559. *l.* 50.

That a *Feme Covert* may make a Deviſe of her Lands. 1 *Sid.* 17.

[Or that *Feme-covert* ſeized in Fee of Copyhold Lands may diſpoſe of her Eſtate without her Huſband's joining. *Stevens* v. *Tyrrel*, *H.* 26 *G.* 2. 2 *Wilſ.* 1.]

Or that Tenant in Fee ſhall not deviſe his Lands in ſuch a Vill. 1 *Rol.* 558. *l.* 15.

Or, ſhall not leaſe for above ſix Years. *Ibid.*

That the Wife of a Tenant in Fee ſhall not be endowed. 1 *Rol.* 563. *l.* 1.

That the Wife ſhall have Property of ſuch a Part of the Goods during Coverture, and ſhall diſpoſe of them without her Huſband. 1 *Rol.* 563. *l.* 5. 609. *l.* 38.

That every Freeholder ſhall pay a Fine to the Lord, upon the Marriage of his Daughter without Licence. *Co. L.* 139, 140.

(S. 17.) Or, againſt a Preſcriptive Right.

Nor, a Cuſtom againſt a Right by Preſcription; as, that any one may erect upon a new Foundation, to the Obſtruction of antient Lights. *R.* 1 *Rol.* 558. *l.* 50. 566. *l.* 5.

So, if a Man preſcribe for a Way, a Cuſtom that another may ſtop it up, is void. 1 *Rol.* 566. *l.* 20.

So, if he preſcribe for Common Appendant or Appurtenant, a Cuſtom that another may incloſe, is void. *R.* 1 *Rol.* 565. *l.* 50. *Jon.* 375. *Cro. Car.* 432.

So

So a Cuſtom is not reaſonable, which imports a Loſs on one Side, without a Benefit in Conſideration; as, that a Lord of a Manor ſhall have the beſt Anchor and Cable of every Ship, that ſtrikes upon Soil within his Manor, and periſhes there, tho' it be not a Wreck. *R.* 3 *Lev.* 85. *Vide* 3 *Lev.* 307.

(S. 18.) If it imports a Loſs on one Side, without a Benefit in Conſideration.

Tho' it be alledged, that the Lord buries the Dead caſt from the Ship; for that is a Matter of Charity. 3 *Lev.* 307.*

So, a Cuſtom, that every Ship which paſſes the River ſhall pay ſuch a Sum, becauſe the City, *&c.* maintains a Key for all Goods unladen in the ſame City; for this does not extend to Ships which do not unlade there. *R.* 1 *Vent.* 71. 1 *Mod.* 47.

* *In* 3 *Lev* 307, S. *ſeems to be adjudged a good Cuſtom.*

Or, becauſe it maintains a Key, and Buſhel for Meaſuring of all Goods. *R.* 2 *Lev.* 97. *Ray* 232. 1 *Mod.* 104.

Tho' the Goods are unladen at another Place in the ſame River. 2 *Lev.* 97.

[So a Cuſtom to ſink Coal-pits, and lay the Rubbiſh, Coal, Wood, *&c. near* the Mouth, on the Land of another, at the Will of the Lord, is void; as unreaſonable, uncertain, and tending to make a Man Judge in his own Cauſe. Determined in *C. B.* and affirmed unanimouſly on Error in *B. R. Wilkes* v. *Broadbent*, *P.* 17 *G.* 2. *Wilſ.* 63. *Str.* 1224.]

(S. 19.) Muſt be certain.

So a Cuſtom ought to be certain, otherwiſe it ſhall be void. *Dav.* 33. *a.* *Vide Præſcription*, (E. 3.)

As a Cuſtom, that an Infant may make a Feoffment, when he is of Age, to count 12 *d.* or meaſure an Ell of Cloth. *Dav.* 33. *a.*

That the Tenant of a Manor, ſhall have all Windfalls, who firſt comes to the Place where they fell. *Dav.* 33. *a.* *But Dav.* 35. *Semb. cont.*

That Land ſhall deſcend *Seniori & Digniſſimo* of the Blood and Surname. *R. Dav.* 35.

So a Cuſtom, that depends upon the Will or Pleaſure of another, is uncertain and void: As, to have half a Mark, or a Horſe, when the Sheriff holds his Tourn. *Dav.* 33, *a.*

That a Leaſe by a Copyholder for a Year, ſhall determine by a Surrender of the Copyholder into the Hands of the Lord. *Hut.* 101.

(S. 20.) Cuſtom, how deſtroyed.

If a Cuſtom be diſcontinued, it is gone. *Dav.* 33. *b.*

CORN.

Vide Diſmes, (H. 1.)—*Biens*, (G. 1, 2.)

CORONATION.

Vide Roy, (C.)

Claims at a Coronation.

Vide Officer, (E. 6.)

CORONER.

Vide Juſtices of Peace, (D. 7.)—*London*, (K. 6.)—*Officer*, (G. 1, &c.)

CORPORATION.

Vide Franchiſes, (F. 1, &c.—G. 4, &c.)—*Capacity.*—*Deviſe*, (H. 5, 6.)—*Diſcontinuance*, (A. 1.)—*London*, (H.)—*Pleader*, (2 B. 1, 2.)

CORRECTION.

Vide Leet, (K.)—*Pleader*, (3 M. 19.)

Houſe of Correction.

Vide Juſtices of Peace, (B. 82.)—*Uſes*, (N. 9.)

COSINAGE.

Vide Aſſiſe, (D.)

COSTS.

(A) When Coſts ſhall be recovered.

(A. 1. By a Demandant, or Plaintiff.

BY the Common Law Coſts were not recoverable in a Plea Real, Perſonal, or Mixt. 2 *Inſt.* 288. 10 *Co.* 116. *a.*

But now, by the *St. of Gloc.* 6 *Ed.* 1. 1. the Demandant may recover the Coſts of his Writ, in all Caſes where he may recover Damages.

And this extends to all the Coſts expended in the Suit. 2 *Inſt.* 288.

And to Coſts upon the firſt Writ, where the Plaintiff purchaſes another by *Journeys Accompts*. *Ibid.*

But he ſhall not have Allowance for his Trouble, or Loſs of Time. *Ibid.*

And the *St. of Gloc.* 6 *Ed.* 1. 1. gives Coſts, in all Caſes where Damages are recoverable by the ſame or any former Act. 10 *Co.* 116. *a.*

So, where any ſubſequent Act gives Damages, in a Caſe where Damages were recoverable before. *Ibid.*

So, where a ſubſequent Statute *de novo* gives a certain Penalty and an Action for it to the Party grieved, he ſhall have Coſts; otherwiſe he might loſe by the Proſecution: As, in an Action upon the *St.* 1 *Ph. & M.* 12. for taking more than 4*d.* for a Diſtreſs, by which he loſes 5*l.* *R. Cro. Car.* 560. 1 *Rol.* 516. *l.* 50. *Jon.* 447. 1 *Vent.* 133. *Mar.* 56.

In an Action upon the *St.* 21 *H.* 8. 6. which gives 40*s.* for taking a Mortuary not due. 1 *Rol.* 516. *l.* 35. *Co. Ent.* 164. *Lut.* 200.

Upon the *St.* 5 *El.* 9. which gives 10*l.* againſt a Witneſs who does not appear upon a *Subpœna*. *R.* 1 *Sal.* 206.

So, upon the *St.* 13 *El.* 5. which gives only a Moiety of the Penalty to the Party grieved, for uſing a fraudulent Deed. *Co. Ent.* 163. *Lut.* 200. 1 *Rol.* 517. *l.* 10.

So where, by a private Act, a Penalty is given to the Party grieved, the Plaintiff ſhall have Coſts; for it is a Duty veſted before the Action brought. *R. Skin.* 363, 367.

So in an Attachment upon a Prohibition, the Plaintiff ſhall have Coſts, if the Defendant be found Guilty. 1 *Rol.* 516. *l.* 30. *R.* 3 *Lev.* 360. 2 *Inſt.* 644.

So,

So, if Judgment be by Default, and Damages found upon a Writ of Inquiry. *R.* 2 *Jon.* 128. *Ray.* 387. 1 *Vent.* 348, 350.

[If on a Writ of Inquiry Damages are given ſeparately, and *pro miſis & cuſtagiis* 20 *s.* then Plaintiff releaſes the Damages as to two Counts, and has Judgment for the Reſidue, with Coſts *de incremento*, it is well; for if Defendant has been at Expence as to the bad Count, the Court can make him an Allowance in the Coſts *de incremento*. *Cutler* v. *Goodwin*, *P.* 7 *G.* *Str.* 420.]

And in Prohibition, if the Verdict be, that the Defendant proceeded after a Prohibition delivered. 1 *Rol.* 516. *l.* 25. *R. Cro. Car.* 559. *Jon.* 447.

And now, by the *St.* 8 & 9 *W.* 3. 11. in all Suits upon Prohibition, if the Plaintiff has Judgment after Plea, or Demurrer.

[If Plaintiff in Prohibition prevails in any Part, he ſhall have Coſts. *Middleton* v. *Croft*, *M.* 10 *G.* 2. *Str.* 1056. *B. R. H.* 395. *Andr.* 57.]

[If Huſband and Wife are Plaintiffs in Prohibition, and Huſband dies before Judgment, yet the Wife ſhall have Coſts; for either the Suit is not abated at common Law, or it is helped by *Stat.* 8 & 9 *W.* 3. *c.* 11. *Ibid.*]

[After Judgment for Plaintiff in Prohibition, Coſts ſhall be allowed from the firſt Motion. *Houghton* v. *Starkey*, *in Sc.* *H.* 4 *G.* *Str.* 82. *Fort.* 348.]

[In Prohibition, Coſts commence from the Suggeſtion; and there ſhall be Coſts of a feigned Iſſue directed to try a Fact for the Information of the Court. *Barnes* 130.]

[If Defendant in Prohibition forces Plaintiff to declare, and pleads nugatory Plea, (as that he had not proceeded in Spiritual Court after Prohibition) Court will on Motion give Coſts; but this is not within 8 & 9 *W.* 3. *c.* 11. *Barnes* 148.]

So the Plaintiff ſhall have Coſts, in Debt for Coſts aſſeſſed for not proving a Suggeſtion. *R.* 1 *Rol.* 516. *l.* 40.

And now, by the *St.* 8 & 9 *W.* 3. 11. in Debt upon the *St.* 2 *Ed.* 6. 13. for not ſetting out his Tithes, where the ſingle Value found by the Jury does not exceed twenty Nobles.

[But none, if above. *Barnes* 150.]

And by the ſame Statute, in all Actions for Waſte, where the ſingle Value found does not exceed twenty Nobles.

And by the ſame Statute, the Plaintiff ſhall have Coſts in a *Scire facias*, if he obtains an Award of Execution after Plea or Demurrer.

In a *Scire facias* upon a Recognizance by Bail. *Semb.* 1 *Sal.* 208.

[Equitable Coſts may be levied out of the Penalty of a Bond, but not out of the Penalty of a Recognizance of Bail. *Baldwin* v. *Morgan*, *H.* 2 *G.* 2. *Str.* 826.]

So the Plaintiff ſhall have Coſts, if he has Judgment upon Demurrer, where he would have had them upon a Verdict.

And in an Action againſt an Executor, or Adminiſtrator. *Hut.* 79. *D. Hard.* 165.

So, where ſeveral Damages are given, he ſhall have entire Coſts, tho' he has Judgment only for Part. *Hob.* 6.

By the *St.* 33 *H.* 8. 39. In Suits upon Specialty to the King, or to another to his Uſe, the King ſhall recover his Coſts and Damages as other Common Perſons do in their Suits.

[In an Action on the Riot-Act, 1 *G.* 1. *c.* 5. for pulling down the Plaintiff's Houſes, brought againſt the Inhabitants of the Hundred, and in Action of Hue and Cry, full Coſts. *Witham* v. *Hill*, *P.* 32 *G.* 2. 2 *Wilſ.* 91. *Barnes* 151.]

[On Recognizance forfeited, and Money levied, the Court will order Proſecutors Coſts to be paid, and the Surplus returned. *R.* v. *Eyres*. *T* 7 *G.* 3. 4 *B. M.* 2118.]

[If Defendant does not go on to Trial by Proviſo, according to Notice. *Wilkinſon* v. *Poole*, *P.* 1 *G.* 2. *Str.* 797.]

[On Trial of a feigned Iſſue by Direction of a Court of Law, Coſts follow the Verdict, and the Court has no diſcretionary Power; but when Iſſue is directed by Chancery, Coſts are not given by this Court, but left to Chancery. *Herbert* v. *Williamſon*, *P.* 25 *G.* 2. 1 *Wilſ.* 324.]

[If

[If there are three feigned Iſſues, and one only found for Plaintiff, he muſt have Coſts, tho' the moſt material is found againſt him. *Tempeſt* v. *Medcalf*, *T.* 25 & 26 *G.* 2. 1 *Wilſ.* 331.]

[If on Motion for *quo warranto* Information, it is agreed to try the Corporation-right by a feigned Iſſue, in which the Proſecutor as Plaintiff prevails, he ſhall have Coſts only from the Time when the feigned Iſſue was firſt agreed to and ordered, (which includes the Coſts of the Diſputes about ſettling the feigned Iſſue, in which Diſpute Plaintiff prevails) but not Coſts antecedent to ſuch Conſent. *Thomas* v. *Powell*, *P.* 31 *G.* 2. 1 *B. M.* 603.]

[If Defendant has Leave to amend Plea on Payment of Coſts, and the Amendment does not deface the Record, and the Replication is not *de Novo*, but only altered ſo as to purſue the Alterations in the Plea; Coſts on the Plea and Replication ſhall not be as if new, but only in Proportion to the Alterations made, and alſo for conſulting Counſel if Replication *de novo* is neceſſary. *Rex* v. *Philips*, *H.* 32 *G.* 2. 2 *B. M.* 757.]

[To a Declaration of two Counts, if Defendant demurs to the one, and has Judgment for him, and pleads to the other, and Verdict againſt him; Plaintiff ſhall have Coſts on the Verdict, but Defendant none on the Demurrer. *Aſtley* v. *Young*, *T. G.* 3. 2 *B. M.* 1232.]

[Defendant pleads ſeveral Pleas; Demurrer to ſome, and Judgment for Plaintiff; Iſſue on others, Plaintiff nonſuited; Plaintiff has Coſts for the Demurrers, according to 4 *Ann*, out of which are to be deducted Coſts of Nonſuit. *Barnes* 136, 140, 141.]

[If Leſſor of Plaintiff dies after Trial, Coſts ſhall be paid to his Repreſentative. *Barnes* 119.]

[If one Defendant in Ejectment confeſſes Leaſe, &c. and there is Judgment againſt him for a Third, and another does not confeſs, the Court will make a Rule againſt him for Coſts. *Barnes* 121, 149.]

[Coſts in one Cauſe may be ſet againſt Coſts in another, if between the ſame Parties; otherwiſe not. *Barnes* 130, 145, 146.]

[If although Plea confeſſes Treſpaſs, Plaintiff replies, and the Cauſe is tried, and Verdict for Defendant; yet the Court will give Judgment for Plaintiff, and Inquiry and Coſts for all Proceedings but the Trial. *Barnes* 133.]

[In *C. B.* Coſts of a former Aſſize, when Cauſe made a *Remanet*, not allowed, unleſs by Conſent expreſſed in the Rule. In *B. R.* otherwiſe. *Barnes* 150, 153.]

[Coſts of a *Remanet*, where neither Side are in Fault, attend the Event of the Cauſe generally, but on Circumſtances otherwiſe, but the Application muſt be recent. *Sadler* v. *Evans*, *M.* 7 *G.* 3. 4 *B. M.* 1984.]

(A. 2.) When a Plaintiff ſhall not recover Coſts. *Vide Poſt*, (D)

But the Plaintiff ſhall not have Coſts, where a Statute ſince the *St. of Gloucester* gives Damages generally, in a Caſe where no Damages at all were recoverable before: As, in *Quare Impedit*. 10 *Co.* 116. *a. Barnes* 139. *Cont.* where the Church was full at the Time of the *Quare Impedit*. *Skin.* 25.

So a Plaintiff, who ſues *Qui tam*, &c. ſhall not have Coſts, be the Penalty certain or uncertain. *R.* 1 *Vent.* 133. 1 *Sal.* 206.

As, upon the *St.* 31 *El.* 12. for not paying Toll for a Horſe before Sale 3 *Lev.* 374. *Lut.* 200.

Upon the *St.* 5 *El.* 9. for 20*l.* againſt him who commits Perjury. *R. Hut.* 22. 1 *Brownl.* 66. *Dub. Cro. El.* 177.

[The Proſecutor in a *Noctanter* ſhall not have Coſts. *Rex* v. *Glaſſenby*, *H.* 10 *G.* 2. *Str.* 1069. *B. R. H.* 355.]

So the Plaintiff ſhall not have Coſts againſt the Garniſhee in a foreign Attachment. *R. Cro. El.* 172.

Nor in a *Scire facias*, till the *St.* 8 & 9 *W.* 3. 11. *Lat.* 101. *Dal.* 95.

[If Plaintiff does not *file* an Affidavit uſed before the Prothonotary to augment Coſts, *C. B.* will ſet the Judgment aſide *Boſeville* v.———, *T.* 11 & 12 *G.* 2. *Barnes* 126.]

[The Security ſhall pay neither Coſts nor Intereſt in a Recognizance forfeited which was given on a Plea to an Extent. *Rex* v. *Albert*, *P.* 1716. *In Sc. B.* 4.]

[On a Repleader, no Coſts to either Party for the immaterial Pleadings. *Barnes* 125.]

[Defendant in Replevin moves to amend Avowry on paying Coſts, his Agent pays them after his Death; they ſhall be returned. *Barnes* 138.]

[Juror withdrawn, Matter referred, Award of Coſts to be taxed; the Coſts of the Reference ſhall not be allowed. *Barnes* 123, 58.]

[Adminiſtrator nonſuited in Action for Tithes accrued in Inteſtate's Life, or in *Trover* when the Converſion was in Inteſtate's Life, pays no Coſts; but if in his own Time he does. *Barnes* 127, 129, 132.]

[They are liable to Coſts in no Action which they cannot bring in their own Right. *Barnes* 141.]

[Nor if nonſuited, on 14 *G.* 2. for not proceeding to Trial. *Barnes* 133.]

But he cannot diſcontinue without Payment of Coſts. *Barnes* 169.]

(A. 3.) When no more Coſts than Damages.

By the *St.* 43 *El.* 6. In perſonal Actions in the Courts of *Weſtminſter* (and by the *St.* 11 & 12 *W.* 3. 9. in the Courts in *Wales*, *Cheſter*, *Lancaſter* and *Durham*) if it appears that the Debt or Damages amount not to 40*s.* the Plaintiff ſhall have no more Coſts than Damages.

Nor, by the *St.* 21 *Jac.* 16. in an Action for Slander, if the Damages are under 40*s.*

Nor, by the *St.* 22 & 23 *Car.* 2. 9. *S.* 149. In other perſonal Actions, unleſs where the Judge at the Trial certifies a Battery to be proved, or a Title to be principally in queſtion; and Judgment for more Coſts ſhall be void. 1 *Vent.* 256.

If a Statute ſays, that if the Damages be under 40*s.* the Plaintiff ſhall not have Judgment, but the Defendant ſhall have Coſts; the Jury ought to find for the Defendant in ſuch Caſe. 5 *Mod.* 367.

The Plaintiff ſhall not have more Coſts than Damages in Treſpaſs for Aſſault and Battery; if the Defendant be found Not Guilty as to the Battery. *R.* 2 *Lev.* 102.

And the Plaintiff ſhall have no more Coſts than Damages, tho' the Plaintiff joins ſeveral Treſpaſſes, and the Defendant juſtifies all, except the *Clauſum fregit*, if the Juſtification be found for the Defendant. *R.* 2 *Vent.* 180, 195.

Tho' the Treſpaſs be for breaking his Cloſe, and alſo putting Stakes upon his Soil. *R.* 2 *Vent.* 48.

Or, breaking his Cloſe and his Soil. *Dub.* 5 *Mod.* 74, *R. Carth.* 224, 5.

Or, breaking his Cloſe, and cutting down Corn. *Semb.* 5 *Mod.* 315. *Skin.* 666.

[Or for breaking and entering Houſe, and keeping Plaintiff out for a Month, whereby he was put to Expenee to regain Poſſeſſion, and loſt the Uſe of it; *Blunt* v. *Mither*, *in C. B. M.* 12 *G. Str.* 645.]

[In Treſpaſs *vie & armis* for entering Plaintiff's Houſe, making Noiſe, and continuing *until* Plaintiff and others gave a Note for Money, not full Coſts. *Appleton* v. *Smith. H.* 2 *G.* 3. 3 *B. M.* 1282.]

[Or for breaking a Door fixed to a Houſe. *Barnes* 121.]

Or, breaking his Cloſe and cutting down his Rails: for they are fixed to the Freehold. *Per Holt*, *Com.* 324. *Anon. T.* 11 *G. Str.* 633.

Or, breaking his Cloſes and pulling up and throwing down his Hedges. *R. Comb.* 420.

[In Treſpaſs, Defendant guilty *quoad Tranſgreſſion' cum averiis & fenſurar. Fraction' Proſtration' & Divulſion.*' and the Judge had not certified; Coſts as Damages. *Mitchel* v. *Soaper*, *P.* 1724. *Bunb.* 167.]

Or, cutting down Trees. *R.* 11 *G.* 1. *C. B. Shepherd and Yard.*

Nor, for Treſpaſs for Aſſault and Battery, and Striking his Horſe, *per quod deterioratas fuit*, and Not guilty, and Damages generally, where no Battery was certified. *R. Paſ.* 11 *Geo. in B. R. inter Clerk and Otherey.* *

* 1 *Str.* 624.

[In Treſpaſs for Battery, Impriſonment, breaking Houſe, &c. Defendant juſtified the Impriſonment, and *Not guilty* to the Reſt; on Trial, Juſtification found for Defendant, and the *Not guilty* for Plaintiff, and 2*s.* 6*d.* Damages: Not full

Coſts for the Battery, for the Judge had not certified; nor for the breaking, &c. as it related to the Freehold. *Beck* v. *Nichols*, *M.* 10 *G.* *Str.* 577.]

Nor, tho' an Action for Slander was commenced before the 21 *Jac.* if it was proſecuted after. *R. Lat.* 2. 58.

Or, commenced in an inferior Court, and removed into *C. B.* by *Habeas Corpus*. *R. in C. B. Tr.* 12 *Ann.*

[Yet, if ſpecial Damage is alledged and put in Iſſue, which would have been a diſtinct Cauſe of Action, Plaintiff ſhall have full Coſts. *Anderſon* v. *Buckton*, *T.* 5 *G.* *Str.* 192.]

But the *St.* 21 *Jac.* 16. does not extend to an Action for Slander of a Title. *Per* 3 *J. Jon.* 196. 1 *Sal.* 207. *Cro. Car.* 141.

Nor, to an Action for Words, actionable only in reſpect of ſpecial Damage. *R.* 1 *Sal.* 206.

Nor, for Words and procuring to be indicted. *R. Cro. Car.* 163, 307. *R. cont.* 2 *Mod. Ca.* 371.

[In Action for Words, whereby he was not only damaged in his Goods, Name, &c. *but alſo* by occaſion of the Words, by the Procurement of Defendant he was taken up and carried before a Juſtice; full Coſts. *Carter* v. *Fiſh*, *M.* 12 *G.* *Str.* 645.]

[*Caſe*, for ſaying to a ſingle Woman.—" You are a common Street-walking " Bitch, and ſtand every Night at the Corners of Streets to be picked up by " Fellows," full Coſts; for the Words in themſelves are not actionable. *Baſs* v. *Hickford*, *P* 12 *G.* 2. *Andr.* 375.]

[But *in Caſe* for Words ſpoken of a Tradeſman, *per quod* he loſt ſeveral Cuſtomers; if the Words themſelves are actionable, no more Coſts than Damages. *Burry* v. *Perry*. *Str.* 936. *Ld. Raym.* 1588. *Surman* v. *Shelleto*, *P.* 5 *G.* 3. 3 *B. M.* 1688. *Barnes* 132. 135. 142.]

[For Words, where no ſpecial Damage proved, and Damages under 40 *s.* if full Coſts are taxed, and Execution, it ſhall be ſet aſide with Coſts. *Barnes* 128.]

And the *St.* 22 & 23 *Car.* 2. does not extend, where the Jury gives Coſts to a Sum certain, more than the Damages are. *R.* 2 *Vent.* 36. 1 *Sal.* 207.

Nor, to a Treſpaſs, in which the Title of the Land does not come in Queſtion: As, in Treſpaſs for throwing down his Stalls in a Market. *R. Ray.* 487. 2 *Jon.* 232.

Nor to Treſpaſs and trampling *Struem*, *Anglicè*, a Hay-Rick. *Dub. F,g.* 42.

Or, killing his Horſe with a Sword. *Ray.* 488.

Or, for entring his Cloſe and impounding his Cattle. *R.* 3 *Mod.* 40.

Or, for entring his Cloſe and plowing his Soil. 5 *Mod.* 74, 316.

Or, digging his Turf, Corn, &c. *Semb.* 1 *Sal.* 193.

Or, entring his Boat, and cutting his Rope. 5 *Mod.* 316. *R. Comb.* 324.

Nor, to a Treſpaſs with an *Aſportavit*, tho' the Thing carried away be of ſmall Value. *R.* 2 *Vent.* 48. *Acc. Skin.* 666.

[In Treſpaſs for Aſſault, and taking a Rope, if the Judge certifies upon *Stat.* 43 *Eliz. c.* 6. there ſhall be no more Coſts than Damages, tho' it is laid with an *Aſportavit*. *Walker* v. *Robinſon*, *T.* 18 *G.* 2. 1 *Wilſ.* 93. *Str.* 1232.]

[In Treſpaſs for entering his Houſe and eating his Meat, ſpecifying Quantities and Kinds, Half a Guinea Damages, and full Coſts; for as to the Goods, it is in the Nature of *Trover*. *Smith* v. *Clark*, *P.* 13 *G.* 2. *Str.* 1130.]

[On *Aſportavit*, or Damage to perſonal Chattel, or for tearing Plaintiff's Cloaths, full Coſts. *Barnes* 119, 120.]

So, if he enters a Cloſe, and digs Roots, and removes them to another Place in the ſame Cloſe; for that is a Carrying away. *Per* 2 *J. Vent. cont.* 2 *Vent.* 215.

So, in Treſpaſs, *quod Oves chaſiavit & abduxit*; for that is a Carrying away. *Carth.* 225.

So the *St.* 22 & 23 *Car.* 2. does not extend to a Treſpaſs where the Defendant juſtifies, and it is found againſt him. *R.* 2 *Lev.* 234.

[To

[To Treſpaſs for building a Wall, and treading down the Graſs, Defendant pleaded *Not guilty*, and a Way; and on Verdict for Plaintiff, he had full Coſts, tho' no Certificate. *Higgins* v. *Jennings*, *M.* 13 *G. Str.* 726. *Ld. Raym.* 1444.]

[In Treſpaſs *quare Clauſum*, *&c.* and any Thing laid for Aggravation, there ſhall be no more Coſts than Damages, tho' the Freehold might come in Queſtion, unleſs the Judge certifies; but if there are ſeperate Counts, and Plaintiff have *intire* Damages, he ſhall have full Coſts without Certificate: If Defendant is found guilty as to *clauſum fregit*, and not guilty *de bonis aſportatis*, Plaintiff ſhall have no more Coſts than Damages. On Conſideration, *per cur.* *Reeves* v. *Butler*, *H.* 1725. *Bunb.* 207.]

[If in Treſpaſs Defendant juſtifies for a Way, and Plaintiff replies *extra viam*, and obtains Verdict, he ſhall have full Coſts, for the Right comes in Queſtion. *Beale* v. *Moor*, *T.* 15 *G.* 2. *Str.* 1168.]

[Plaintiff ſhall not have full Coſts, tho' Defendant pleaded a Tender, if Judge certifies under 43 *Eliz.* *Bartlet* v. *Robins*, *P.* 5 *G.* 3. 2 *Wilſ.* 258.]

[On Treſpaſs, Juſtification; on new Aſſignment, Not guilty; is not ſpecial Pleading, to intitle to more Coſts than Damages. *Barnes* 124, 129.]

[Only *clauſum fregit*, and Aſſault and Battery are within 22 & 23 *Car.* 2; and if Plaintiff brings one Action for an Offence within, and another without the Statute, and has a Verdict for both, he ſhall have full Coſts. *Barnes* 134.]

[But not if he recovers for that within, and not for that without. *Barnes* 144.]

[Several Juſtifications to Treſpaſſes in different Places, and not guilty to novel Aſſignment, all found for Defendant but this laſt, no more Coſts than Damages. *Barnes* 149.]

Where the Action did not commence at *Weſtminſter*, but is removed out of an inferior Court. *Semb.* 2 *Lev.* 124. *R.* 4 *Mod.* 379.

Where the Action is for diſturbing his Common. *R.* 2 *Mod.* 141.

Or, for chaſing his Sheep, *&c.* *R.* 1 *Sal.* 208.

[So, for chaſing his Cow and Fowls with Dogs, full Coſts. *Keen* v. *Whiſtler*, *M.* 9 *G.* *Str.* 534.]

[For entering his Cloſe and chaſing his Bull, full Coſts. *Thompſon* v. *Berry*, *P.* 9 *G.* *Str.* 551.]

[For taking *vi & armis* Plaintiff's Horſe, and ſending and conveying him from *A.* to *B.* full Coſts. *Harper* v. *Jiffer*, *T.* 10 & 11 *G.* 2. *B. R. H.* 375.]

Neither does it extend to Debt, *Aſſumpſit*, Account, *Trover*, *Detinue*, *&c.* where the Title to Land cannot come in Queſtion. 1 *Sal.* 208.

Nor, to the Battery of a Servant, *per quod Servitium amiſit*. 5 *Mod.* 74. 1 *Sal.* 208.

[In Treſpaſs for criminal Converſation with Plaintiff's Wife, he ſhall have full Coſts (without the Judges Certificate) tho' the Damages under 40 *s.* *Batchelor* v. *Bigg*, *M.* 13 *G.* 3. 3 *Wilſ.* 319.]

Nor, by the *St.* 4 & 5 *W.* & *M.* 23. to Treſpaſs againſt an inferior Tradeſman for hunting, hawking, fiſhing, or fowling.

And every Tradeſman ſeems to be intended by *inferior Tradeſmen*. *Paſ.* 9 *W.* 3. *Bennet* and *Thalbois*. 1 *Sal.* 212. (*Reported Comyns's Rep.* 26.)

[A Clothier and Alehouſe-man found an inferior Tradeſman by Jury, pays full Coſts under 4 & 5 *W.* & *M.* *Barnes* 125.]

[Who is an inferior Tradeſman, under *Stat.* 4 & 5 *W.* & *M.* *c.* 23. is not determined; Court divided, and no Rule. *Clive* and *Bathurſt* J. thought every Tradeſman not qualified, and that it is a Queſtion of Law; *Willes* C. J. and *Noel* J. that not every Tradeſman, and that it ſhould be left to the Jury. *Buxton* v. *Mingay*, *T.* 30 & 31 *G.* 2. 2 *Wilſ.* 70.]

Nor, by the *St.* 8 & 9 *W.* 3. 11. to a Treſpaſs which appears at the Trial, and is certified by the Judge upon the Record, to be wilful and malicious.

[In wilful and malicious Treſpaſs, by *Stat.* 8 & 9 *W.* 3. *c.* 11. *ſſ.* 4. the Judge of *niſi prius* muſt certify in open Court at the Trial; his Certificate afterwards is void. *Ford* v. *Parr*, *P.* 28 *G.* 2. 2 *Wilſ.* 21.]

And

And tho' the *St.* 22 & 23 *Car.* 2. ſays, the Judgment ſhall be void, it ſhall not be avoided by Plea. 2 *Vent.* 36.

(A. 4.) By an Avowant.

By the *St.* 7 *H.* 8. 4. an Avowant, or he who makes Conuſance in *Replevin*, or Second Deliverance for Rent, Cuſtom, or Service, if it be found for him, or the Plaintiff be barred, ſhall recover Damages and Coſts, as the Plaintiff ſhould have done if he had recovered.

So, by the *St.* 21 *H.* 8. 19. He who avows, &c. for *Damage-feaſant*, or other Rent.

And, by Equity, if he avows for an Amerciament in a Court Leet or Baron. *R. Mo.* 893. *R.* 2 *Cro.* 520. *R. cont. Cro. El.* 300. *Dub. Cro. Car.* 534. *Semb.* 2 *Rol.* 75. *Court divided, Jon.* 422, 434. *Cont. per Holt, Carth.* 179.

Or, for a Fine in a Court Leet. *R. Mo.* 893.

Or, for an Eſtray. *Dub. Ow.* 13. *Cro. El.* 258, 329. *Acc.* 2 *Cro.* 520.

Or, for a Heriot. 2 *Cro.* 28.

Or, for a Relief. *Dub.* 2 *Cro.* 28. *Jon.* 422.

Or, for the Penalty of a By-Law. *Per* 2 *J. Jones cont. Cro. Car.* 534. *Jon.* 421.

[But Avowant of Seizure for *Heriot Cuſtom* is not intitled to Coſts under 11 *G.* 2. *c.* 19. *Lloyd* v. *Winton*, *M.* 29 *G.* 2. 2 *Wilſ.* 28. *Barnes* 148.]

And the Avowant ſhall have Coſts, tho' Judgment be againſt the Plaintiff upon Demurrer. *R.* 2 *Cro.* 520.

Or the Plaintiff be nonſuited. *M.* 13 *W.* 3. *inter Smith and Walgrave.* (*Reported Comyns's Rep.* 122.)

So, if an Executor avows by Force of the *St.* 32 *H.* 8. 37. tho' it be a ſubſequent Statute to 21 *H.* 8. 19. *R.* 2 *Rol.* 457.

So, tho' ſeveral Iſſues be joined upon the Avowry, and ſome found for, and ſome againſt him, and the Plaintiff has not Coſts for the Iſſues found for him. *R.* 2 *Cro.* 473. *Dub.* 2 *Rol.* 37. *R. acc.* 2 *Rol.* 140.

[If ſome Iſſues are found for Avowant, and ſome againſt him, Coſts for one ſhall be deducted out of the other. *Barnes* 146.]

But, if a Defendant in *Replevin* pleads in Abatement, and avows for a Return, and has Judgment, that the Plea ſhall abate, and for a Return; he ſhall not have Coſts. *R. M.* 13 *W.* 3. *B. R. inter Smith and Walgrave.* (*Reported Comyns's Rep.* 122.)

If he pleads Property. *Hard.* 153.

(A. 5.) By a Tenant, or Defendant.

(A. 5.) In an Action. By the *St.* 23 *H.* 8. 15. If a Plaintiff be nonſuited, or have Verdict againſt him, in an Action upon the *St.* 5 *R.* 2. in Debt, or Covenant on Specialty made to the Plaintiff, or on a Contract with the Plaintiff, in *Detinue*, if Property be alledged in the Plaintiff, in Account againſt a Bailiff or Receiver to the Plaintiff, in an Action on the Caſe, or on a Statute for a perſonal Wrong or Offence to the Plaintiff, the Defendant ſhall have Coſts.

So, if Judgment be againſt the Plaintiff upon Demurrer. *R.* 1 *And.* 117. *Vide infra.*

And by the *St.* 4 *Jac.* 3. In Treſpaſs, Ejectment, or other Action, where Plaintiff ſhould have had Coſts, if he had recovered.

So, by the *St.* 8 *El.* 2 & 13 *Car.* 2. 2. If the Plaintiff be nonſuited for want of Declaration, or afterwards diſcontinue, or be nonſuited.

So, by the *St.* 4 *G.* 2. 28. If in any Ejectment the Plaintiff be nonſuited, unleſs for want of confeſſing Leaſe, Entry, and *Ouſter*.

So, by the *St.* 8 & 9 *W.* 3. 11. If Judgment be againſt the Plaintiff or Demandant upon Demurrer, in Bar. *R.* 1 *Sal.* 194. *Mod. Ca.* 88.

[If Defendant pleads not guilty, and not guilty within ſix Years; and Iſſue on the firſt is found for Plaintiff, and then Demurrer on the ſecond is found for Defendant

fendant; there ſhall be no Coſts on either Side on the Trial, and Defendant ſhall have Coſts on the Demurrer. *Cooke* v. *Sayer*, *H.* 32 *G.* 2. 2 *B. M.* 753.]

Or the Plaintiff in Prohibition, *Scire facias*, Debt upon *St.* 2 *Ed.* 6. 13. or in Waſte, be nonſuited, diſcontinues, or has a Verdict againſt him.

[Verdict for Defendant in Prohibition, as to Part, he has Coſts. *Barnes* 138.]

So, by the *St.* 4 & 5 *W.* & *M.* 18. An Informer, if a Verdict be againſt him, or a *Nolle Proſequi* entred by him, ſhall pay Coſts; unleſs the Judge, on the Trial, certify there was a probable Cauſe for the Information. *Vide Poſt*, (A. 6.)

[In an Action *qui tam* for exerciſing a Trade contrary to *Stat.* 5 *Eliz.* 4. notwithſtanding Affidavit offered that the Suit was for the Benefit of the Corporation. *Elde* v. *Stephens*, *H.* 10 *G.* 2 *Ld. Raym.* 1333.]

[*A.* convicts *B.* on Game-laws, he pays Penalty, *A.* brings Action, *B.* on the Juſtice's refuſing Copy of Conviction brings *Certiorari*, *A.* gets Conviction affirmed, and is nonſuited in Action; *B.* ſhall have Coſts of the *Certiorari* allowed him in Coſts on the Nonſuit. *Rex* v. *Midlam*, *T.* 5 *G.* 3. 3 *B. M.* 1720.]

[In Action on 9 *G.* 1. *c.* 22. *ſſ.* 7. for Damages ſuſtained by ſetting Plaintiff's Barn on Fire, if Plaintiff is nonſuited, Defendant ſhall have Coſts; for Plaintiff was the Party grieved, and would have been intitled to Coſts. *Greetham* v. *Hundred of Thale*, *T.* 5 *G.* 3. 3 *B. M.* 1723.]

And therefore now, in all Caſes where the Plaintiff would have Coſts, if he had recovered, the Tenant or Defendant ſhall have Coſts, if the Plaintiff be barred, or nonſuited.

If he be barred upon a ſpecial, as well as upon a general Verdict. *R. Cro. El.* 465.

Or, diſcontinue after a ſpecial Verdict. *Dub. Cro. Car.* 575.

And this, ſince the *St.* 4 *Jac.* 3.—But not upon the *St.* 23 *H.* 8. 15. if the Action be not for a perſonal Wrong or Offence. 2 *Leo.* 9. 52. 3 *Leo.* 68.

As, in an Action upon the Caſe generally, or in an Action upon a Statute.

In *Warrantia Chartæ*. *Semb.* 3 *Lev.* 322.

[On Iſſue tried, a Caſe ſtated, and argued in Court, but the Facts not being ſufficiently ſtated, the Court recommended, and Parties agreed to go to a new Trial, where Plaintiff was nonſuited; and Defendant had Coſts upon the Whole, and not the Nonſuit only. *Herring* v. *Davila*, *P.* 6 *G.* *Str.* 300.]

So the Defendant ſhall have Coſts, where the Plaintiff would be intitled to Coſts generally in the ſame Action, tho' he would not have had them in that particular Caſe: As, if the Plaintiff be nonſuited in an Action for Words, which are not actionable. *R. Hut.* 16. *Hob.* 219.

So, if the Plaintiff be nonſuited, *&c.* but the Declaration is inſufficient. *R.* 2 *Rol.* 88, 213. *R. Cro. Car.* 175. *Cont. Cro. Car.* 545, where a Verdict was for the Plaintiff, and Judgment arreſted for a Fault in the Declaration.

So, if the Plaintiff be nonſuited at *Niſi prius*, *&c.* tho' the Plea of the Defendant be inſufficient. *R. Mo.* 625.

Or, enters a *Nolle proſequi*, or *Retraxit*. *Dub. Hard.* 152.

[For not going on to execute a Writ of Inquiry; as for not going on to Trial. *Shedford* v. *Houſton*, *T.* 6 *G.* *Str.* 317. *Sutton* v. *Bryan*, *M.* 13 *G.* *Cobb.* v. *Kingſmill*, *T.* 13 *G.* *Str.* 728. *P.* 12 *G.* 2. *Barnes* 230.]

So a Defendant, being an Executor, or Adminiſtrator, ſhall have Coſts; tho' a Plaintiff, Executor or Adminiſtrator does not pay Coſts. *R. Cro. El.* 503.

So a Defendant ſhall have Coſts where the Plaintiff ſues as Executor, or Adminiſtrator, if it be for a Wrong to himſelf, or upon his Contract; as, in Treſpaſs or Trover for Goods of the Teſtator taken out of the Poſſeſſion of the Executor himſelf. *Hut.* 79. *R. Cro. Car.* 219. *Jon.* 241. *R. Lat.* 220. *R. cont. per totam Curiam*, 3 *Lev.* 60. *R. acc. in C. B.* 6 *Ann. inter Hunt and Ballow*, (*cited Comyns's Rep.* 163.) *R. Sav.* 133, 4. *Vide Poſt*, (A. 7.)

[If Executor of an Attorney declares that Teſtator did Buſineſs for Defendant, and leaving it unfiniſhed, Plaintiff cauſed it to be finiſhed, and in Conſideration

Defendant undertook to pay, and Plaintiff is nonſuited, he ſhall pay Coſts. *Marſh* v. *Yellowly*, *H.* 12 *G.* 2. *Str.* 1106. *Andr.* 356.]

In Raviſhment of a Ward out of the Cuſtody of the Executor. *Dub. Cro. Car.* 29. *Hut.* 79. *Cont.* 3 *Lev.* 60.

In Debt for Rent upon a Leaſe by the Executor, of a Term of the Teſtator. *Hut.* 79.

In Account againſt one as his Receiver. *Semb. Bend. pl.* 28. *R. Dal.* 96.

In *Trover* for Goods, of which his Teſtator died poſſeſſed, and which afterwards came to the Hands of the Defendant by Finding, tho' he does not alledge any Poſſeſſion in himſelf; for the Finding was in his Time, and he might have had the Action in his own Name. *R. Jon.* 241. *R.* 1 *Vent.* 109. *R. in C. B. P.* 8 *Ann. inter Hole and King, (Reported Comyns's Rep.* 162.) *Harris* v. *Hanna*, *H.* 9 *G.* 2. *B. R. H.* 204.

So, where the Plaintiff in Ejectment declares upon the Demiſe of an Executor, and is nonſuited; for the Action is his proper Action, and he is bound by the Rule. *Per C. B. M.* 5 *Ann.*

In an *Indebitatus Aſſumpſit* for Money received to the Uſe of the Plaintiff as Executor or Adminiſtrator. *R.* 1 *Sal.* 207. *Cont. Semb.* 1 *Sal.* 314. *R. acc. Mod. Ca.* 91, 181. *acc. Barnes* 119.

So, in *Trover* by an Adminiſtrator for Goods of the Inteſtate taken after his Death, and before Adminiſtration. *R.* 1 *Vent.* 109. *R. in C. B. M.* 9 *Ann. Adm.* 1 *Sal.* 314.

So, if the Plaintiff ſues as Executor *de ſon Tort. Lit.* 5.

So an Executor ſhall pay Coſts, for not proceeding to Trial upon Notice. 1 *Sal.* 314. *Hawes* v. *Saunders*, *M.* 5 *G.* 3. 3 *B. M.* 1584. Or non-proſſed for want of declaring in due Time. *Ibid.*

[If a Point is reſerved, and there is Judgment for Defendant, who dies, Coſts muſt be paid his Executor. *Barnes* 120.]

[Executor or Adminiſtrator may have Attachment for Coſts due to the Deceaſed. *Barnes* 122.]

[*Prochein Amy* of Plaintiff is liable to Coſts. *Barnes* 128.]

So now, by the *St.* 8 & 9 *W.* 3. 11. In Treſpaſs, Aſſault, falſe Impriſonment or Ejectment againſt ſeveral, if one or more Defendants be acquitted by Verdict, they ſhall have Coſts, as if the Verdict had been againſt the Plaintiff as to all; unleſs the Judge, at the Trial, immediately certify on the Record, that there was a reaſonable Cauſe to make them Defendants.

[Plaintiff in Ejectment nonſuited, may pay Coſts to which Defendant he pleaſes. *Jordan* v. *Harper*, *P.* 8 *G. Str.* 516.]

But if the Plaintiff be nonſuited for a Fault in the Declaration, tho' divers Defendants appear ſeverally, they ſhall have only Coſts for one.

So, in an Information, if one Defendant be acquitted, he ſhall not have Coſts, tho' the Judge does not certify. *R.* 1 *Sal.* 194.

So, in Debt upon the *St.* 2 & 3 *Ed.* 6. 13. If the Plaintiff be nonſuited, or has a Verdict againſt him, the Defendant ſhall not have Coſts; for it is not a Debt by Specialty or Contract, or for a perſonal Wrong to the Plaintiff; and therefore it is not within 23 *H.* 8. 15. 2 *Inſt.* 651.

If the Defendant recovers Coſts, he may have Execution for them by *Capias ad ſatisfaciendum*. *R.* 2 *Cro.* 595.

And tho' Judgment be afterwards reverſed; the Coſts ſhall not be refunded. *Per* 2 *J. Engleſield cont. Dy.* 32. *a. Mo.* 625.

[It is not ſufficient that the Damages are laid above 40 *s.* to draw the Caſe out of the *Stat.* 3 *J.* 1. *c.* 15. Plaintiff muſt recover ſo much, or he ſhall pay Defendant's Coſts; and the Court will order Plaintiff to file the Plea-roll, and bring in the *Poſtea*, that Defendant may enter a Suggeſtion on the Roll, to intitle himſelf thereto. *Hickman* v. *Colley*, *M.* 13 *G.* 2. *Str.* 1120. *Andr.* 377. *Barnes* 470.]

[If Defendant is allowed to make a Suggeſtion on the Record for Coſts, he ſhall have Coſts for this Application as well as for the Trial. *Ibid.*]

[But

[But if it appears that the real Demand was above 40 *s.* and is reduced below it by a Set-off, it does not affect the Juriſdiction, and Defendant ſhall not have, but pay Coſts. *Pitts* v. *Carpenter*, *T.* 16 *G.* 2. *Str.* 1191. *Wilſ.* 19.]

[If Defendant moves for ſpecial Jury, and Plaintiff is nonſuited, he ſhall pay the extraordinary Coſts attending on ſpecial Jury, all but the Striking; ſo the Loſer in all Caſes: And the Court will allow more to a ſpecial than to a common Jury. *Wilkes* v. *Eames*, *M.* 11 *G.* 2. *Str.* 1080. *Andr.* 51. *Hamilton* v. *Style*, *M.* 11 *G.* 2. *Str.* 1080. *Andr.* 51.]

[If there are two Cauſes *A.* v. *B.* and *B.* v. *A.* and Verdict for Defendant in each; the Coſts in one Cauſe cannot be ſet againſt the Coſts in the other. *Duthy* v. *Titho*, and *Titho* v. *Duthy*, *H.* 17 *G.* 2. *Str.* 1203.]

[If there is a Rule for Payment of Coſts, and the Prothonotary's *Allocatur*, the Affidavit of Service (to ground an Attachment) muſt be *on* ſuch a Day, not *on or about*, for it might be on a *Sunday*. *Brett adſ. Wadham*, *P.* 4 *G.* 3. 2 *Wilſ.* 227.]

[If a Cauſe goes off for Want of Jury, the Coſts of Attendance ſhall be allowed. *Sparrow* v *Turner*, *M.* 8 *G.* 3. 2 *Wilſ.* 366.]

[Leſſor of Plaintiff, an Infant or abroad, ſhall name good Plaintiff, or give Security for Coſts. *Anon.* *P.* 19 *G.* 2. 1 *Wilſ.* 130. *Barnes* 183, 188.]

[Leſſor of Plaintiff reſiding in *Ireland* ſhall give Security for Coſts, tho' Ejectment is brought by Direction of Chancery where Security is already given. *Denn* v. *Fulford*, *T.* 1 *G.* 3. 2 *B. M.* 1177. If Leſſor dies, Security ſhall be given. *Barnes* 47.]

[But in other Actions the Court will not require Plaintiff gone abroad, and having no Effects in *England* to give Security for Coſts. *Boſwell* v. *Iriſh*, *T.* 7 *G.* 3. 4 *B. M.* 2105.]

[*C. B.* will ſtay Proceedings in Ejectment, till Coſts of a former in *B. R.* are paid. *Barnes* 133.]

(A. 6.) In an Information.

So, by the *St.* 18 *El.* 5. The Defendant in an Information ſhall have Coſts, if the Informer delays his Suit, diſcontinues, be nonſuited, or the Trial or Matter paſs againſt him by Verdict, or Judgment againſt him in Law.

[If the Proſecutor does not go on to Trial, he ſhall pay Coſts. *Rex* v. *James*, *M.* 9 *G.* 2. *B. R.* *H.* 159.]

[If Proſecutor gives Notice of Trial, and neither goes to Trial, nor countermands in Time, Defendant ſhall have Coſts by the Courſe of the Court; unleſs Defendant *draws in* Proſecutor to give Notice, by Hopes of producing Books, and then refuſes them. *Rex* v. *Heydon*, *H.* 2 *G.* 3. 3 *B. M.* 1304.]

Tho' he be not a common Informer, (unleſs when he is the Party grieved.) *R.* 4 *Leo.* 55. *R.* 1 *And.* 116.

Tho' the Information be upon a Penal Statute made ſince 18 *El.* *R. Hut.* 35.

Tho' the Informer obtains a Verdict, if Judgment be againſt him, for that the Statute upon which the Information is founded was repealed, or expired. *Semb. Hut.* 36, *but the Court divided.*

If Judgment be againſt the Informer, upon a Demurrer, or ſpecial Verdict. *Per* 3 *J. Hut.* 36. *Garland* v. *Burton*, *M.* 12 *G.* 2. *Str.* 1103.

So, in all Caſes, where the Cauſe paſſes againſt the Informer for Want of Matter or Form. *Per* 2 *J. but the others cont. Hut.* 36.

So by the *St.* 4 & 5 *W.* & *M.* 18. The Clerk of the Crown in *B R.* ſhall not file an Information, &c. before a Recognizance given of 20*l.* to proſecute, &c. and if a Verdict paſs for the Defendant, or a *Nolle proſequi* be procured, to pay Coſts taxed in three Months after Demand; unleſs the Judge certify there was Cauſe for the Information.

But the *St.* 18 *El.* 5. *S.* 5. allows any grieved, by Maintenance, Champerty, buying Titles, or Embracery, to ſue on the Statutes for ſuch Offences.

And it does not extend to Officers of Record, who, in reſpect of Office, have uſed to exhibit Informations, or ſue on penal Statutes.

Nor to Officers informing for Matters only concerning his or their Offices.

[Coſts ſhall be allowed Defendant, where the Verdict is for him, though he has brought an Action for the Seiſure, and recovered in it. *Shipton* v. *Newman*, *in Sc. M.* 1721. *Bunb.* 90.]

[On Motion for Coſts againſt the Seizer for not going on to Trial, Court divided. *Warwick* v. *Rawlins*, *H.* 1721. *Bunb.* 96.]

[If Proſecutor for killing Game does not reply, Defendant ſhall have Coſts; for 18 *El. c.* 5. extends to Informers on all penal Statutes. *Law* v. *Worrall*, *M.* 21 *G.* 2. 1 *Wilſ.* 177.]

So, if one Defendant be found guilty, tho' the other be acquitted, he ſhall not have Coſts. *Sal.* 194. *Vide Ante*, (A. 5.)

So, where the Information is by the Party grieved, the Defendant ſhall not have Coſts. 4 *Leo.* 55. *R.* 2 *Leo.* 116. *R. Sav.* 50. 1 *And.* 116.

As, in an Information for Perjury. *Semb. Cro. El.* 177. 1 *Brownl.* 66.

If a Verdict be againſt an Informer upon a Fault in pleading, no Coſts: As, if an Information be for not incloſing a Wood within a Month after cutting it down; and alledges the Cutting on the 10th of *April*, and that it lay open till the 2d of *May*, which is not a Month. *R. Hut.* 35.

[If the Charge appears frivolous and groundleſs, on ſhewing Cauſe againſt a *Quo Warranto* Information, the Court will diſcharge the Rule with Coſts. *Rex* v. *Lewis*, *P.* 32 *G.* 2. 2 *B. M.* 780. *Rex* v. *Carpenter*, *P.* 9 *G.* 2. *Str.* 1039.]

[Proſecutor of Information in Nature of a *Quo Warranto* ſhall pay Coſts for not going on to Trial. *Rex* v. *Powell*, *H.* 3 *G. Str.* 33.]

[The Statute of 4 & 5 *W. & M. c.* 18. extends to Informations in Nature of *Quo Warranto*, where Proſecutor does not proceed; Stat. 9 *Ann. c.* 20. only where there has been Verdict or Judgment. *Rex* v. *Morgan*, *P.* 9 *G.* 2. *Str.* 1042.]

[On an Information *Quo Warranto*, if Proſecutor does not procure it to be tried in the Year after Iſſue joined, Defendant ſhall have Coſts as far as the Recognizance extends; if it goes to Trial, he may have full Coſts by Stat. 9 *Ann.* *Rex* v. *Howell*, *P.* 9 *G.* 2. *B. R. H.* 247.]

[If there is a Rule by Conſent to try the Validity of a Bye-Law, and Judgment on the Information to be entered accordingly, Coſts follow of Courſe. *Rex* v. *Phillips*, *H.* 23 *G.* 2. 1 *Wilſ.* 261.]

[On Rule by Conſent to try Right of Election by feigned Iſſue, and Coſts to abide the Event of Iſſue; Coſts ſhall be paid on the Crown-Side, as well as in the Civil Action. *Oldknow* v. *Wainwright*, *T.* 33 & 34 *G.* 2. 2 *B. M.* 1017.]

[If Defendant is acquitted againſt Evidence and the Direction of the Court, yet, if no Certificate that there was reaſonable Cauſe, Defendant ſhall have his Coſts, tho' the Chief Juſtice who tried the Cauſe certify *ore Tenus*, that the Verdict was againſt Evidence. *Rex* v. *Woodfall*, *P.* 13 *G.* 2. *Str.* 1131.]

[Where treble Coſts are to be recovered againſt a Proſecutor for a Matter not appearing on the *Poſtea*, Court will allow a Suggeſtion of the ſpecial Matter on the Record. *Rex* v. *Poland*, *E.* 3 *G. Catheral* v. *Cooper*, *H.* 5 *G.* 2. *Str.* 49.

[On an Indictment in *B. R.* for not repairing the Highway, Coſts were allowed to the Proſecutors, though Judgment was not entered; and the Recognizance diſcharged on the Way's being mended. *Queen* v. *Hornſey*, *P.* 1 *G. Fort.* 255.]

[If Coſts are ordered to be paid to or by a Defendant, and he dies before Payment, his Executor ſhall neither have nor pay them. *Rex* v. *Earl*, *T.* 4 *G.* 2. *Str.* 874.]

[Defendant ſhall have Coſts, though he himſelf removed the Information. *Dover* v. *Hodgſon*, *T.* 19 & 20 *G.* 2. 1 *Wilſ.* 139.]

[On a Conviction for Deer-ſtealing affirmed, Coſts ſhall be taxed, as between Attorney and Client. *Rex* v. *Dore*, *H.* 12 *G.* 2. *And.* 352.]

[If there is a Rule for a ſpecial Jury, and they do not appear, and neither Side prays a *Tales*, and the Defendant has a Warrant for a *Tales* in his Pocket, he ſhall not pay Coſts. *Rix* v. *Righton*, *P.* 5 *G.* 3. 3 *B. M.* 1694.]

But

But a Defendant ſhall not have Coſts, if the Plaintiff diſcontinues his Original. *R.* 1 *Leo.* 105.

(A. 7.) When a Defendant ſhall not recover Coſts. *Vide Ante*, (A. 6.)

Or enters a *Nolle proſequi* after Iſſue; for it is a Bar to another Action, and therefore differs from a Nonſuit. *Dub. Hard.* 153.

[If a *Scire facias* (or the Writ in an Action) is abated by the Plea, no Coſts ſhall be paid, though the Party move to quaſh his own Writ. *Pocklington* v. *Peck*, *M.* 12 *G. Str.* 638.]

[If Plaintiff on Plea in Abatement, enters *nil capiat per breve*. *Barnes* 120, 257.]

If the Plaintiff be nonſuited in an Aſſiſe; for the Statute does not extend to an Aſſiſe. 1 *Brownl.* 28, 9.

So he ſhall not have Coſts, if a Repleader be awarded. 2 *Vent.* 196. *R. Mod. Ca.* 2.

So the Defendant ſhall not have Coſts, where the Plaintiff in an Action of the like Nature ſhall not have Coſts, if he recovers; as, in an Attaint. *R. Cro. Car.* 542. *Jon.* 432.

In an Action upon a penal Statute by *Qui tam, &c. R. Hut.* 22. 1 *Brownl.* 66.

So a Defendant ſhall not have Coſts, if the Plaintiff, being an Infant, ſues by Guardian. *R. Cro. El.* 33.

If a Plaintiff, being Executor or Adminiſtrator, ſues merely in the Right of his Teſtator, *&c.* for the *St.* 23 *H.* 8. 15. extends only to an Action upon a Contract or Wrong to the Plaintiff himſelf; and the *St.* 4 *Jac.* 3. enlarges Coſts as to more Actions, not againſt more Perſons. *R. Hut.* 69. *D. Cro. El.* 503. *R. Yel.* 168. *Dal.* 96. *Bend. pl.* 28. *R.* 2 *Rol.* 87.

As, in an Action for Goods taken away in the Life of the Teſtator. *Hut.* 79.

In Debt upon an Obligation to the Teſtator; tho' the Defendant pleads *Non eſt factum*, and it is found for him. *R.* 2 *Cro.* 229.

[Or, though the Breach be aſſigned after the Teſtator's Death. *Portman* v. *Came*, *H.* 12 *G. Str.* 682. 2 *Ld. Raym.* 1413.]

Or, pleads Payment to the Executor himſelf, and it is found ſo. *R.* 1 *Vent.* 92.

[The Defendant in *Indeb. Aſſump.* ſhall not have Coſts of Plaintiff Executor, though more Money paid into Court than the Verdict. *Knight* v. *Ducheſs Hamilton*, *in Sc. P.* 1717. *Bunb.* 44.]

So, in an Action for an Eſcape of a Perſon in Execution to the Teſtator. *R.* 1 *Rol.* 63.

Or, in Execution upon his Suit as Executor. *R.* 2 *Cro.* 361.

So, in *Aſſumpſit* upon a *Computaſſet* with the Teſtator. *R.* 2 *Jon.* 47. *R.* 1 *Sal.* 207, 314.

Or, with the Executor himſelf for Money of the Teſtator. *R.* 2 *Jon.* 47. 2 *Lev.* 165. 3 *Lev.* 60. 1 *Sal.* 208.

So, in *Trover* for Money of the Teſtator out of his own Poſſeſſion. *Vide Ante*, (A. 5.) *cont. acc. per Holt*, 1 *Sal.* 208.

In *Trover* for Goods of the Teſtator which he loſt in his Life-time, tho' the Converſion be alledged in the Time of the Executor. *R. in C. B.* 6 *Ann. inter Hunt and Ballow, per Holt*, 1 *Sal.* 208. *(cited Comyns's Rep.* 163.)

So the Defendant ſhall not have Coſts, if the Plaintiff Executor, or Adminiſtrator, be nonſuited within the *St.* 8 *El.* 2. *R. Cro. El.* 69.

[If Adminiſtrator diſcontinues with Leave, he pays no Coſts. *Baynham* v. *Matthews*, *T.* 4 *G.* 2. *Str.* 871.]

Or, if an Executor or Adminiſtrator brings Error upon a Judgment againſt his Teſtator, or himſelf. *Vide Poſt*, (B.)

If the Plaintiff takes Adminiſtration when there was an Executor living. *R. Lit.* 5.

If the Plaintiff ſues as Executor, and upon Iſſue, That he was not Executor, it be found for the Defendant. *R.* 1 *Brownl.* 79.

So the Defendant ſhall not have Coſts by the *St.* 8 & 9 *W.* 3. 11. if Judgment be for him upon Demurrer to his Plea in Abatement. *R.* 1 *Sal.* 194.

[Defendant acquitted in Treſpaſs on the Caſe is not intitled to Coſts under 8 *W.* 3. only in Treſpaſs *Vi & Armis*. *Dibben* v. *Cooke*, *H.* 8 *G.* 2. *Str.* 1005.]

So the Defendant ſhall not have Coſts by the *St.* 23 *H.* 8. 15. if the Plaintiff be admitted *in formâ Pauperis*.

Nor, by the *St.* 24 *H.* 8. 8. If the Plaintiff ſues upon a Recognizance, Specialty, or Contract to the Uſe of the King.

But if there be a Plaintiff *in formâ Pauperis*, the Court may tax Coſts, which the Plaintiff ſhall pay, or be whipped. 1 *Sid.* 261. 2 *Sal.* 506.

And he ſhall be diſpaupered, where he has an Eſtate, though he owes the Value. *Per Holt*, *Sal.* 507.

If the Jury gives Coſts where they ought not to be, the Court ſhall give Judgment without Reſpect to the Coſts. *R.* 2 *Sand.* 257.

Tho' the Plaintiff does not releaſe the Coſts. *Ibid.*

[If Leſſor of Plaintiff delivers many Ejectments, but countermands in Time to ſave Coſts, the Court will not ſtay Proceedings on the laſt, till Payment of Coſts in the former. *Thruſtout* v. *Troubleſome*, *M.* 12 *G.* 2. *Str.* 1099.]

[Court will not ſtay Proceedings till Coſts of former Action paid (except in Ejectment, and then not if Plaintiff is in Priſon on Attachment for Non-payment.) *Barnes* 125, 180.]

[Infant Leſſee in Ejectment gives no Security for Coſts, nor Informer on penal Statute. *Barnes* 177, 126.]

[Plaintiff in Ejectment is a mere nominal Perſon; and a Perſon who happens to be of that Name is not liable to Coſts. *Barnes* 188.]

[Plaintiff ſhall not pay Coſts for not proceeding to Trial according to Notice, if his Default is not wilful. *Barnes* 133.]

[Inquiry to be executed before Judge of Aſſize, Plaintiff gives Notice for a *particular* Day, and does not execute, no Coſts; for Notice ſhould have been general. *Barnes* 135.]

[Defendant in *Trover* has no Coſts. *Barnes* 139.]

[Aſſault and Battery againſt two, who plead Not guilty, and one *ſon Aſſault* alſo; guilty both on the general Iſſue, for Defendant on *ſon Aſſault*, yet he has not Coſts. *Barnes* 143.]

[Plaintiff countermands Notice of Trial, and then diſcontinues, Coſts; they ſhall not be paid for a Witneſs who ſet out to attend the Trial before Countermand. *Barnes* 307.]

[Treſpaſs againſt four, three acquitted; they cannot have their Coſts deducted out of the Coſts to be paid by the other Defendant found guilty. *Barnes* 145.]

[Several Juſtifications to Treſpaſſes in different Places, and not guilty on novel Aſſignment, all found for Defendant but the laſt; he has not Coſts. *Barnes* 149.]

(B) Coſts in Error.

BY the *St.* 3 *H.* 7. 10. confirmed by the *St.* 19 *H.* 7. 20. If Tenant, Defendant, or other bound by Judgment, ſue a Writ of Error in Delay of Execution, and diſcontinue it, be nonſuited, or have Judgment affirmed, he ſhall pay Coſts and Damages at the Diſcretion of the Juſtices.

And if the Judgment be affirmed, *&c.* the Defendant in Error ſhall have Coſts, tho' Coſts were not recoverable in the firſt Action: As, in a *Quare Impedit*. *Dy.* 77. *a.* *R. Cro. Car.* 145, 175.

In a *Quod permittat* for abating a Nuſance. *R. Cro. El.* 659.

So the Defendant in Error ſhall have Coſts, tho' the Error be in the *Exchequer*, upon the *St.* 27 *El.* 8. *Cro. El.* 588.

By the *St.* 8 & 9 *W.* 3. 11. In Error on Judgment for Defendant, if the Judgment be affirmed, or the Plaintiff diſcontinue, or be nonſuited, the Defendant or Tenant ſhall have Coſts.

So by the ſame Statute, If Error be ſued of a Judgment on Demurrer.

And

And by the *St.* 4 & 5 *Ann.* 16. If a Writ of Error be quaſhed for Variance, or other Defect, which was not before. 5 *Mod.* 67. *Mod. Ca.* 137.

[But if Writ of Error is quaſhed, by reaſon that Continuances are entered after it's *Teſte*, it ſhall be without Coſts. *Gould* v. *Coulthurſt*, *M.* 5 *G. Str.* 139.

[Whether Plaintiff in Error ſhall have Coſts in this Caſe, being defeated by Artifice of Defendant in Error. *Dublin Judges divided. Ibid.*]

[If a Writ of Error is brought againſt an Affirmance in *B. R.* in *Ireland*, of a Judgment obtained there by Defendant in Prohibition, and it is quaſhed for Defect, the Defendant in Error ſhall have Coſts, though none were given below either in the principal Judgment or the Affirmance. *Archbiſhop of Dublin* v. *Dean of Dublin*, *H.* 6 *G. Str.* 262.]

[If Writ of Error is quaſhed, becauſe brought by one Defendant, where there are two, there ſhall be Coſts. *Cooper* v. *Ginger*, *M.* 11 *G. Str.* 606.

If Writ of Error is quaſhed, becauſe returnable before Judgment given, Coſts ſhall be paid by the Party who occaſioned the Delay. *Rejindoz* v. *Randolph*, *P.* 2 *G.* 2. *Str.* 834.]

By the *St.* 3 *Jac.* 8. & 13 *Car.* 2. 2. a Writ of Error ſhall be no *Superſedeas*, unleſs a Recognizance be given with Sureties. *&c.* for Payment of Damages and Coſts.

And by the *St.* 13 *Car.* 2. 2. If Error be brought of a Judgment after a Verdict, and the Judgment be affirmed; the Defendant in Error ſhall have double Coſts.

But the Defendant in Error ſhall not have Coſts, where by the Writ of Error the Execution is not delayed: As, if Error be ſued by the Plaintiff or Demandant in the original Action. 2 *And.* 123. *R. Cro. Car.* 401. *R.* 4 *Mod.* 7.—But now, by the *St.* 8 & 9 *W.* 3. 11. If the Plaintiff or Demandant, after any Judgment for Defendant, ſue Error, and afterwards diſcontinue, be non-ſuited, or have Judgment againſt him, the Defendant or Tenant ſhall have Coſts.

So, no Coſts, if Execution be ſued before Error brought. *R.* 2 *Cro.* 636. *R.* 1 *Vent.* 88. 2 *And.* 123.

And if Execution be executed in Part, Coſts ſhall be diminiſhed. *Cro. Car.* 175.

So, if neither Damages nor Coſts were recovered in the original Action; for then the Writ of Error does not delay Execution;

As, in Error upon a Judgment in a *Formedon*. *R. Cont. Cro. El.* 617. *R. acc. Cro. Car.* 425.

In Error upon a Common Recovery. *R. Ray.* 135. *R.* 1 *Lev.* 146.

So, if an Executor brings Error upon a Judgment againſt his Teſtator, and the Judgment be affirmed, *&c.* the Defendant ſhall not have Coſts. *R.* 1 *Mod.* 77. 1 *Vent.* 166.

[If Executor brings Error on Judgment againſt Teſtator on Bond, and after Affirmance moves to pay Principal, Intereſt and Coſts, he ſhall not pay Coſts in Error. *Saltern* v. *Wynne*, *P.* 10 *G.* 2. *Str.* 1072. *B. R. H.* 367.]

[But if Executor brings Error after a *Devaſtavit*, he ſhall pay Coſts on Affirmance. *Caſwell* v. *Norman*, *T.* 7 *G.* 2. *Str.* 977.]

Or, upon a Judgment againſt himſelf, as Executor. *R.* 3 *Lev.* 375. 4 *Mod.* 245. *Skin.* 400.

And therefore, an Executor or Adminiſtrator does not find Bail for Damages and Coſts upon a Writ of Error within the *St.* 3 *Jac.* 8. *R.* 2 *Cro.* 350. *Bul.* 284. *Cro. Car.* 59. *Lit.* 3. 1 *Sid.* 183. *Vide Bail*, (K. 3.)

So, if a Plaintiff in *Replevin* brings Error, and Judgment for the Avowant be affirmed, he ſhall not have Coſts. *R.* 1 *Sal.* 205. *Carth.* 179. But this was 2 *W.* & *M.* before the *St.* 8 & 9 *W.* 3. 11.

So, if Judgment be reverſed in Error, the Defendant does not pay Coſts in Error; for the Plaintiff recovers his Debt and Coſts which he ought to have had if he had recovered before. *R.* 2 *Mod. Ca.* 314. *Wyvil* v. *Stapleton*, *M.* 11 *G. Str.* 615.

[Or

[On Affirmance of Judgment in a *Qui tam* Action, there may be Costs in Error, tho' there were none in the original Suit. *Ferguſon* v. *Rawlinſon*, H. 11 G. 2. *Str.* 1084. *Andr.* 113.]

[On Error on a Bond given in *India*, *B. R.* will direct the Damages to be computed, by adding to the Costs *Indian* Intereſt (9 *per Cent.*) till ſigning the Judgment, and legal Intereſt (5 *per Cent.*) from that Time, on the accumulated Sum aſcertained by the Judgment. *Bodily* v. *Bellamy*, *M.* 1 G. 3. 2 *B. M.* 1094.]

[If Bail in Error, on Judgment affirmed and *Sci. Fa.* againſt them, give vexatious Delay, the Court where the *Sci. Fa.* is, will order Intereſt from the Time of the Affirmance: Before that, 'tis the Province of the Court where Error is brought. *Welford* v. *Davidſon*, *T.* 7 G. 3. 4 *B. M.* 2127.]

(C) Double, or Treble Costs.

(C. 1.) By Conſtruction.

IN all Actions Real, Perſonal, or Mixt, where Damages are recoverable, if a ſubſequent Statute gives double or treble Damages. the Costs alſo, as Part of the Damages, ſhall be double or treble. 2 *Inſt.* 289.

As, upon the *St. of Gloc.* 5. which gives treble Damages in Waſte againſt Tenant by the Curteſy, or in Dower. *Ibid.*

Upon the *St.* 2 *H.* 4. 11. which gives double Damages for a Suit in the Admiralty, where the Cauſe of Action ariſes upon the Land. 10 *Co.* 116. 1 *Rol.* 517. *l.* 15. *Dy.* 159. *b.*

Upon the *St.* 8 *H.* 6. 9. which gives treble Damages for a forcible Entry. 10 *Co.* 115. *b.* *R.* 1 *Vent.* 22.

Upon the *St.* 5 *El.* 21. which gives treble Damages for hunting in a Park. 4 *Leo.* 36.

Upon the *St.* 2 *W. & M.* 5. which gives treble Damages and Costs of Suit againſt him, who makes *Reſcous* of Goods which are diſtrained for Rent. *R. T.* 6 *W.* 3. *inter Sir W. Lawſon and Story*, 1 *Sal.* 205. (*Vide* 1 *Ld. Ray.* 19.)

[Costs *de Incremento* are to be doubled, as well as thoſe given by the Jury. *Smith* v. *Dunce*, *T.* 9 G. 2. *Str.* 1048.]

(C. 2.) By the expreſs Words of a Statute.

(C. 2.) Double Costs. So by the *St.* 2 & 3 *Ed.* 6. 13. If a Suggeſtion for a Prohibition be not proved in ſix Months, the Defendant ſhall have a Conſultation, and double Costs.

But this does not extend, where the Defendant does not pray a Conſultation for not proving the Suggeſtion, but joins Iſſue upon it, and a Verdict is for the Plaintiff; for then the Defendant ſhall not have double Costs. *R. Lat.* 140.

Nor where a Suggeſtion needs no Proof.

So, by the *St.* 7 *Jac.* 5. In an Action upon the Caſe, or Treſpaſs in the Courts at *Weſtminſter* againſt a Juſtice of Peace, Mayor, Bailiff, Headborough, Portreeve, Conſtable, Tithingman, or Collector of Subſidy, for any Thing done by Virtue of their Offices, the Judge before whom it is tried may allow to the Defendant double Costs.

[In Treſpaſs againſt Juſtice of Peace, if Plaintiff after Plea moves to diſcontinue, the Court may order double Costs by Rule, tho' on Verdict or Nonſuit it muſt be by Suggeſtion. *Deveniſh* v. *Mertins*, *P.* 7 G. 2. *Str.* 974.]

[By Stat. 24 G. 2. *c*, 44. in Action againſt Juſtice of Peace, if the Judge certifies that the Injury was wilful and malicious, Plaintiff ſhall have double Costs.]

So, by the *St.* 21 *Jac.* 12. In an Action againſt a Churchwarden, Overſeer, Swornmen, or any in their Aid, or by their Command, for any Thing done in Virtue of their Offices.

And by theſe Statutes the Defendant ſhall have double Coſts upon Certificate by the Judge, tho' the Plaintiff afterwards diſcontinue, or be nonſuited. *Vide the Statute itſelf.*—So Coſts *de incremento* ſhall be double. *Per Holt, Skin.* 555.

And all the Defendants ſhall hav double Coſts. *Vau.* 117.

And this, tho' the Declaration be inſufficient. *R. Cro. Car.* 175. *Vide Ante,* (A. 5.)

Tho' it be not in Treſpaſs, *&c.* but in *Aſſumpſit, &c.* for Money which they took as Officers. *R. Show.* 215.

But the Defendant ſhall not have Coſts, if the Judge does not certify that the Defendant was an Officer. *Cro. Car.* 175. *R.* 2 *Vent.* 45.

[If Plaintiff in an Action of *Trover* againſt Officers is nonſuited for not ſhewing a Title to the Goods, ſo that no Evidence of their being Officers appears, a Suggeſtion may be entered on the Roll for that Purpoſe, to intitle them to their double Coſts. *Barton* v. *Miles, T.* 8 *G.* 2. *B. R. H.* 125.]

Or, if the Officer acts in a Matter Eccleſiaſtical: As, if an Action upon the Caſe be againſt a Churchwarden for a malicious Preſentment for Incontinence, in the Spiritual Court. *R. Cro. Car.* 285. *Jon.* 305.

Nor in an Action for Neglect of his Office; as, for Refuſal of his Vote in the Election of a Mayor. *R.* 2 *Lev.* 250.

For a malicious Preſentment. *R. Cro. Car.* 467.

[Under 13 *G.* 2. *c.* 19. to reſtrain Horſe-Races, Plaintiff or Informer has double Coſts.]

[Defendant, after Verdict for Plaintiff for leſs than 40*s.* ſhall have Leave to enter Suggeſtion on the Roll, that he reſides in *Middleſex*; to intitle him to double Coſts, under 23 *G.* 2. *c.* 33. *Fitzpatrick* v. *Pickering, P.* 30 *G.* 2. 2 *Wilſ.* 68.]

So, by the *St.* 8 *El.* 2. If any maliciouſly arreſts in the Name of another, without his Conſent, in *B. R.* or the *Marſhalſea,* and be convicted, *&c.* he ſhall be impriſoned for ſix Months without Bail, and ſhall pay treble Coſts to the Perſon arreſted. (C. 3.) Treble.

By the *St.* 43 *El.* 2. *for Relief of the Poor,* In an Action for any Thing done by Authority of that Act, the Defendant ſhall have treble Damages and his Coſts, if the Plaintiff be nonſuited, or has a Verdict againſt him.

Tho' the Money was not levied by Diſtreſs, but voluntarily paid to the Overſeer, and he, who paid it, afterwards ſues for the Money. *R. Yel.* 176.

So, by the *St.* 2 *W. & M.* 5. upon a *Reſcous* of a Diſtreſs for Rent, there ſhall be treble Damages and Coſts.

So, by the *Statutes for the Land-tax,* if the Defendant be ſued as Collector of the Land-tax, he ſhall have treble Coſts. [*Braſſey* v. *Dawſon, T.* 7 *G.* 2. *Str.* 978.]

Tho' by another Count in the ſame Declaration, he be charged for Fraud in the Execution of his Office, which is not within the Statute. *R. Carth.* 189.

And where treble Damages and Coſts are given, the Coſts *de incremento,* as well as the Damages, are treble. *R. Skin.* 555.

[Defendant pleading Inſolvent Act, has Coſts from the Time of his Plea. *Barnes* 136.]

(C. 4.) When not recovered.

But if a Statute gives double or treble Damages, where no Damages were recoverable at all, before; the Plaintiff ſhall not have any Coſts. 2 *Inſt.* 289. *Vide Ante,* (A. 2, 3.)

As, in Waſte againſt Tenant for Life or Years; (until the *St.* 8 & 9 *W.* 3. 11. gave Coſts if the ſingle Value found does not exceed twenty Nobles.) 2 *Inſt.* 289. 2 *Sand.* 257.

In an Action upon the *St.* 1 & 2 *P. & M.* 12. which gives 5*l.* and treble Damages for driving a Diſtreſs out of the County. *R. Dy.* 177. *b.* 1 *Rol.* 516. *l.* 45.

In Debt upon the *St.* 2 & 3 *Ed.* 6. 13. which gives treble Damages for not ſetting out of Tithes; (until the *St.* 8 & 9 *W.* 3. 11. gave Coſts where the ſingle Value found does not exceed twenty Nobles.) *R.* 2 *Cro.* 70. *Cro. Car.* 560. *Mo.* 915.

In an Action for a forcible Entry, upon the *St.* 8 *H.* 6. 9. *Hard.* 152.

Or, for Ingroſſing, upon the *St.* 5 & 6 *Ed.* 6. 14. *Hard.* 152.

In a *Decies tantum*. *Hard.* 152.

Where the Plaintiff or Demandant recovers double or treble Damages and Coſts, it is the ſafeſt Way, that the Damages and Coſts found by the Jury be doubled or trebled; and that there be no Coſts *de Incremento*. 1 *Rol.* 517. *l.* 20.

And the ſingle Damages found may be doubled, or trebled by the Court. *R. Yel.* 176.

Yet Coſts *de Incremento* may be given. 1 *Rol.* 517. *l.* 25.

And Coſts *de Incremento* were trebled. *Cro. El.* 582.

If Coſts are given by a Jury, when they ought not, there ſhall be Judgment without Reſpect to them. *R.* 2 *Sand.* 257.

Coſts in Chancery.

Vide Chancery, (2 W.)

COTTAGES.

Vide Juſtices of Peace, (B. 84.)

COVENANT.

(A) When Covenant lies.

(A. 1.) Upon what Deed.

COVENANT lies when a Man covenants with another, by Deed, to do ſomething, and does it not. *F. N. B.* 145. *A.*

Or, that he has done it; when it is not done. *Pl. Com.* 308. *a.*

And it lies upon a Covenant in any Deed indented, or Poll. 1 *Rol.* 517. *l.* 40.

So, for breaking a Covenant by the Leſſee in the King's Patent; tho' the Leſſee did not ſeal any Counterpart; for his Acceptance charges him. *R.* 1 *Rol.* 517. *l.* 50. 2 *Cro.* 522. *R.* 2 *Cro.* 240.

So, if a Leaſe be to *A.* and *B.* by Indenture, and *A.* ſeals a Counterpart, and *B.* agrees to the Leaſe, but does not ſeal, yet *B.* may be charged for a Covenant broken. *Co. L.* 231. *a.* 2 *Rol.* 63.

Tho' the Covenant be collateral, and not annexed to the Land. *Co. L.* 231. *a.*

So, if by Charter-Party made by *B.* he lets the Ship to *D.* who covenants with *B.* and *A.* the Part-owners, to pay 300*l.* *A.* may have Covenant, tho' he did not ſeal, but only *B.* and *D.* ſealed it; for it is in the Nature of a Deed-Poll by *D.* in which he may covenant with a Stranger to the Deed, tho' he cannot in an Indenture. *R.* 2 *Lev.* 74.

So, if by Articles, *A.* covenants generally to indemnify *B.* he may have Covenant, tho' he did not ſeal the Articles, and the Covenant was not with him. *R. Lut.* 305.

But Covenant does not lie upon an Agreement without Deed; but an Action upon the Caſe. *F. N. B.* 145. *A. G.*

Yot, by the Cuſtom of *London*, Covenant lies within Deed. *F. N. B.* 146. *A.*

So, by the Cuſtom of any other Place. 1 *Leo.* 2.

But ſuch Cuſtom ſhall be taken ſtrictly; for upon ſuch a Covenant, an Executor ſhall not be charged. *R.* 1 *Leo.* 2.

So Covenant cannot be for a Thing preſent. *Pl. Com.* 308. *a.*

[It lies not on a Leaſe made by the Committee of a Lunatick, for he cannot makes a Leaſe at Law. *Knipe* v. *Palmer*, *T.* 33 & 34 *G.* 2. 2 *Wilſ.* 130.]

(A. 2.) Upon what Words.

A Covenant is Real or Perſonal. *F. N. B.* 145. *A.* *Co. L.* 139. *b.* *Vide Dett.* (A. 8, 9.)

A Covenant Real is, when a Man covenants to levy a Fine of Lands or Tenements, upon which a Writ of Covenant ſhall be brought, and a Fine ſhall be levied. *F. N. B.* 145. *A.* 146. *F.*

A Covenant Perſonal is by expreſs Words, or by a Covenant in Law. *Vau.* 118. *Co. L.* 139. *b.*

Any Words in a Deed, which ſhew an Agreement to do a Thing, make a Covenant: As, if it be agreed by Articles between *A.* and *B.* *that Stock ſhall be in the Hands of* B. *until a Jointure be made*, B. ſolvendo proinde *the Intereſt to* A.; Covenant lies againſt *B.* for the Intereſt. *R.* 1 *Rol.* 518. *l.* 50.

If it be ſaid in a Leaſe, *that the Leſſee ſhall repair, and leave repaired, &c.* *R.* 1 *Rol.* 518. *l.* 15. 2 *Cro.* 399.

That the Leſſee ſhall have Wood, non ſuccidendo Arbores; this is a Covenant by the Leſſee that he will not cut down Trees. *R. Mar.* 9.

If ſaid, *I have a Deed, and will produce it.* 2 *Mod.* 89. *R.* 1 *Rol.* 519. *l.* 10.

So, if in a Demiſe by the King's Letters Patent, it is ſaid, *that the Grantee ſhall repair*; it ſhall be a Covenant by him. *R.* 2 *Cro.* 522.

If there be a Grant of an Office, *abſque Impetitione, Denegatione, &c.* Covenant lies if the Grantee does not enjoy. *R.* 1 *Leo.* 277.

So, if it be ſaid, *that it is agreed* A. *ſhall pay* 10l. *to* B. *for his Goods*; this amounts to a Covenant by *B.* to deliver his Goods; for, *agreed*, is the Word of both. *R.* 1 *Sand.* 322. 1 *Sid.* 423. *Ray.* 183.

That A. *ſhall take Firebote, without cutting more than is neceſſary*; Covenant lies againſt *A.* if he cuts more. *R.* 1 *Leo.* 324.

That an Apprentice ſhall be faithful, ſhall not diſcover the Secrets of his Maſter, &c. *R. Mo.* 135.

So, if Tenant in Tail leaſes for Years, and afterwards *covenants and grants that the Leſſee ſhall hold to him and his Wife for the Life of the Leſſor*; this does not amount to a Surrender, or Confirmation to enlarge his Eſtate, but to a Covenant. *R. Dy.* 272. *b.*

If the Leſſee agrees, *that the Leſſor ſhall have two Rooms of an Houſe*, and a Leaſe be of the Houſe, *except the two Rooms, and free Paſſage to them*; if the Leſſor be diſturbed in his Paſſage by the Leſſee, Covenant lies againſt him. *R.* 1 *Sal.* 196.

Otherwiſe, if diſturbed in the Rooms; for they were excepted. 1 *Sal.* 196.

If a Man covenants to ſtand ſeiſed to the Uſe of his Son, *ſaving that his Wife ſhall have the Loppings of Trees*; if the Son cuts down the Trees, Covenant lies againſt him. *R. Cro. Car.* 437.

If by Articles of Agreement it is ſaid, *that it is intended a Fine ſhall be levied*; this amounts to a Covenant to levy it. *R.* 2 *Mod.* 91.

If *A.* covenants, *that* B. *ſhall take ſo many Trees yearly*, and afterwards cuts them all down; *B.* ſhall have Covenant againſt him. *Mod.* 18.

So, if the Words are introduced by Words of Condition; as, if a Leaſe be, *upon Condition, that the Leſſee ſhall keep and leave the Houſe in as good Plight, &c.* 40 *Ed.* 3. 5. *b.*

Or, *with Proviſo, that if the Leſſee dies within forty Years, his Executor ſhall have it for ſo many Years*; this is a Covenant by the Leſſor, that the Executor ſhall have it. 1 *Rol.* 518. *l.* 45.

So,

So, *provided and it is agreed, that the Leſſor ſhall find Timber.* 1 *Rol.* 518. *l.* 20.

Provided he pay out of the firſt Profits of an Office. *R.* 1 *Lev.* 155.

So, Covenant lies if an Agreement appears in an Obligation. *Ca. Ch.* 294.

So, if it be ſaid in a Deed, *that an Obligation is in the Hand of* B. *and that I will deliver it*; Covenant lies for not delivering it. *R.* 1 *Rol.* 519. *l.* 10.

So, if a Man gives a Releaſe for Money recovered by him, and at the End of the Deed mentions, *that he will not ſue Execution*; if he afterwards ſues it, Covenant lies againſt him upon this Deed. *R.* 1 *Rol.* 517. *l.* 45.

So, if a Deed be, *I oblige myſelf to pay at ſuch a Day*; Covenant lies. *R. Hard.* 178.

So, if by Writing it is agreed, *that* A. *ſhall give* B. 70l. *for a Houſe*; Covenant lies againſt *B.* for not conveying the Houſe. *R.* 1 *Sand.* 320. *Ray.* 183. 1 *Sid.* 423. 1 *Lev.* 274.

That A. *ſhall be accountable to* B. *for all Money received.* *R.* 1 *Lev.* 47.

So, if *A.* aſſigns and transfers Money due to him from a foreign State. *R.* 1 *Mod.* 113.

When Covenant, or Debt lies, *Vide Action*, (M. 4.)

(A. 3.) Upon what, not.

But where Words do not amount to an Agreement, Covenant does not lie; as, if they are merely Conditiohal to defeat the Eſtate: As, a Leaſe, *provided and upon Condition, that the Leſſee collect and pay the Rents of his other Houſes.* *R.* 1 *Rol.* 518. *l.* 30.

So, if the Words are only a Qualification of the Words on the other Part; as, if a Leſſee covenants to repair, *provided that the Leſſor finds Timber*; this is not a Covenant by the Leſſor to find it, if there be not the Word, *agreed.* *R.* 1 *Rol.* 518. *l.* 25.

If *B.* covenants to pay 100*l.* to *A.* and he covenants, *upon Receipt, to give an Acquittance, and to make an Obltgation, &c.* it is not any Covenant that he will receive and give an Acquittance. 2 *Dan.* 231.

So, if a Deed be in the Nature of a Defeaſance; Covenant does not lie upon it, but an Action upon the Caſe: As, if by Deed it be agreed, *that a Statute be cancelled*, in the preſent Tenſe. *Semb.* 1 *Sid.* 48.

So, if a Mortgage be by *A.* to *B.* by a Demiſe for Years, with a Proviſo to be void, *if* A. *pay* 10l. *at ſuch a Day, and* 410l. *at ſuch a Day*, and there be a Bond for Performance of all Covenants, Payments, *&c.* Debt does not lie, if *A.* does not pay, without an expreſs Covenant for Payment; for the Mortgage is forfeited. *Semb.* 2 *Mod.* 36.

So, if the Mortgage was by Feoffment. *R.* 2 *Cro.* 281. *Yel.* 206.

(A. 4.) When it lies upon a Covenant in Law.

Vide Garranty, (A.)

So ſome Words import and make a Covenant in Law, tho' there be not any expreſs Covenant: As, if a Man, by Deed demiſe Land for Years, and the Leſſee is ouſted; Covenant lies upon the Word, *demiſi.* 1 *Rol.* 519. *F. R.* 4 *Co.* 80. *b.* *Dy.* 257. *a.* *R.* 2 *Leo.* 104. *Cro. El.* 674. *R.* 2 *Cro.* 73.

So, if he demiſe, or aſſign, by the Word, *conceſſi.*

So, if he demiſe *reddendo* Rent; Covenant lies for Non-payment of the Rent, upon the Word *reddendo.* 1 *Rol.* 419. *l.* 25. 1 *Sid.* 266, 447.

Tho' the Reſervation be to a Stranger. *Per Hale*, 1 *Mod.* 113.

So, if he convey the Inheritance with Warranty, and the Feoffee, *&c.* be evicted for Years; Covenant lies upon the Word *Warrantizo.* *R.* 1 *Rol.* 519. *l.* 20. *Yel.* 139. 1 *Rol.* 25. *R. Hob.* 3.

So it lies upon a Warranty in a Fine *Sur Conceſſit* for Years. 2 *Sand.* 180. 1 *Lev.* 301. 1 *Sid.* 466.

So

So it lies againſt a Woman after the Death of her Huſband, upon a Warranty in a Fine by them *Sur Conceſſit* for Years. *R.* 1 *Sand.* 180. 1 *Mod.* 291.

So it lies upon a Warranty in Law, by the Word *Dedi*, *&c.* if he be evicted for Years.

Or, by the Word, *Dedi*, *Conceſſi*, or *Demiſi*, of an Eſtate for Life, tho' the Eviction be only for Years; for he cannot be aided by Voucher, Rebutter, or *Warrantia Chartæ*. *R. Hob.* 4.

So Covenant lies upon the Word, *Demiſi*, if the Leſſor had not Power to demiſe; tho' the Leſſee never entred, nor was evicted. *R. Hob.* 12.

Tho' the Leaſe was good only by Eſtoppel. *R.* 2 *Cro.* 73.

So, if he demiſes, *reddendo* ſuch a Rent free of all Taxes; Covenant lies, if he does not pay it, diſcharged of Taxes before or afterwards impoſed. *R. Carth.* 135.

So, if a Leſſee for Years be diſtrained by the Lord *Paramount*; he ſhall have Covenant againſt him in the *Meſnalty*, tho' he cannot have a Writ of *Meſne*. *Ray.* 257.

So, if a Leſſor does an Act which deſtroys or defeats the Effect of his Grant, Covenant lies againſt him; as, if *A.* grants the Uſe of a Way to *B.* and afterwards ſtops it. 1 *Sand.* 322.

But an expreſs Covenant controuls the Generality of a Covenant in Law: And therefore, if a Leſſor covenants, that the Leſſee ſhall enjoy without Eviction *by him or any who claim under him*; Covenant does not lie upon Eviction by a Stranger. *R.* 4 *Co.* 80. *b.*

So, if a Leſſor covenants, that the Leſſee ſhall take Eſtovers *by Aſſignment*; he cannot take them without Aſſignment. *Semb. Dy.* 19. *b.*

If a Leſſee covenants to repair at his own Charges, he cannot take Timber. *Vide Dy.* 198. *b.* 314. *a.*

So, if Goods be demiſed by Indenture for Years; if the Leſſee be evicted, Covenant does not lie upon the Word, *demiſi*; for the Law does not create a Covenant for a perſonal Thing.

So, if *A.* demiſes a Houſe, and the Uſe of a Pump; Covenant does not lie, if the Leſſee cannot uſe it. *R. cont. per* 3 *J. but Twiſd. acc. and the Judgment was reverſed.* 1 *Sand.* 322. 1 *Sid.* 430.

So, if *A.* covenants or promiſes by Deed, to do ſuch a Thing; Covenant does not lie by any one not named in the Deed. *R.* 1 *Sal.* 197.

(B) By whom it lies.

(B. 1.) By an Executor, or Adminiſtrator.

IF a Man covenants with *B.* to do a perſonal Thing, and *B.* dies; his Executor or Adminiſtrator ſhall have Covenant upon it. *F. N. B.* 145. *D.* 146. *D. Reg.* 165. *b.*

By whom, and to whom, a Condition ſhall be performed, Vide Condition (G. 1, 2.—O, 1, 2.)

So, if he covenants with *B.* and does not name his Executor or Adminiſtrator.

By whom Debt lies, Vide Dett, (C. D.)

So, if he covenants with *B.* his Heirs and Aſſigns, upon a Grant or Conveyance of an Inheritance; the Executor or Adminiſtrator of *B.* may have Covenant for Damages, upon a Breach in his Life-time. *R.* 1 *Vent.* 176, 347. 2 *Lev.* 26.

So, if he covenants with a Biſhop and his Succeſſors to repair a Rectory demiſed; the Executor of the Biſhop may have Covenant for a Breach in his Life-time. *R.* 2 *Vent.* 56.

(B. 2.) By an Heir.

So, where the Covenant relates to the Inheritance, the Heir may have an Action upon it. 1 *Rol.* 520. *l.* 42.

As, if an Abbot covenants with a Lord of a Manor to ſing in his Chapel, for him and his Family. 42 *Ed.* 3. 3. *Dy.* 24. *a.*

If one Parcener, upon Partition, covenants with the other, to acquit her of a Suit iſſuing out of the Land. *R.* 42 *Ed.* 3. 3. *b.* *Vide Co. L.* 385. *a.* 5 *Co.* 18. *a.*

If a Man covenants with another and his Heirs, to make ſuch an Aſſurance. *Bend. pl.* 260. *Dy.* 338. *a.* 1 *And.* 55.

If a Man covenants to convey Part of Lands purchaſed, to the Heir of his Coparcener. *R. Dy.* 338. *a.*

To leave the Eſtate in Repair at the End of the Term. *R.* 2 *Lev.* 92.

Tho' the Covenant be with the Leſſor, his Executors and Adminiſtrators, and does not name the Heir. *R.* 2 *Lev.* 92. Where the Covenant was ſuch as runs with the Land, and appears to be intended to have Continuance after his Death.

(B. 3.) By an Aſſignee.

So by the Common Law, upon a Covenant in Law, the Aſſignee of the Eſtate ſhall have an Action. *Dy.* 257. *F. N. B.* 146. *C.* 1 *Rol.* 521. *I.* *R.* 4 *Co.* 80. *b.* *R.* 5 *Co.* 17. *a.* *Mo.* 419.

So, Tenant by Statute-Merchant, *&c.* who comes to the Land by Act of Law. 5 *Co.* 17. *a.*

So, tho' the Aſſignment be by *Parol*, where it may be good by *Parol.* *Mo.* 419. *Cro. El.* 437.

So, upon a Covenant which runs with the Eſtate, the Aſſignee ſhall have an Action, tho' not named: As, if an Abbot covenants to ſing for *B.* and all the Lords of ſuch a Manor, in his Chapel there; the Aſſignee of the Manor ſhall have Covenant. 1 *Rol.* 521. *l.* 15. 5 *Co.* 17. *b.* *Co. L.* 385. *a.*

If one Parcener covenants with the other to acquit her of a Suit due on the Land, the Aſſignee of the other Parcener ſhall have Covenant. 1 *Rol.* 521. *l.* 22. 5 *Co.* 18. *a.* *Co. L.* 384. *b.* 385. *a.*

If a Leſſee covenants to repair; the Aſſignee of the Reverſion ſhall have Covenant. *R.* 1 *Lev.* 109. *R.* 3 *Lev.* 326. *Adm.* 1 *Sal.* 317.

So, if he be named, the Aſſignee ſhall have Covenant by the Common Law, upon a Covenant, which relates to the Inheritance: As, if a Man covenants with a Purchaſer, his Heirs and Aſſigns, to make further Aſſurance, *&c.* *R.* 1 *Rol.* 521. *l.* 25. *R. Cro. Car.* 503.

If he covenants with a Leſſee, his Executors and Aſſigns, that he ſhall recoup out of his Rent. *Semb. Cro. Car.* 137.

And now, by the *St.* 32 *H.* 8. 34. Patentees of the King, and Grantees or Aſſignees of Reverſion from the King, or any other, may maintain Actions for not performing the Covenants, *&c.* expreſſed in their Leaſes, againſt the Leſſees, their Executors, Adminiſtrators or Aſſigns, as the Grantors might have done. *Vide Condition*, (O. 2.)

And thereupon the Patentee of the King (as the King himſelf) ſhall have Covenant againſt the Leſſee, his Executor or Aſſignee. *R.* 2 *Rol.* 64.

Tho' he be Aſſignee of the Reverſion only for Years. *R. Cro. El.* 600, 617.

So Covenant lies by an Aſſignee, againſt the Leſſee or his Executor, for Rent due after the Aſſignment of the Term, and Acceptance of Rent from the Aſſignee. *R.* 3 *Lev.* 233. *R.* 2 *Rol.* 64. *Vide Poſt*, (C. 1.)

So it lies by an Aſſignee of Part of the Eſtate demiſed. *Semb.* 1 *Leo.* 250.

Or the Aſſignees of ſeveral Parts may join. *R.* 1 *Lev.* 109. 1 *Sid.* 157. *Ray.* 80.

And tho' the Leſſee did not covenant with the Leſſor and his Heirs and Aſſigns, but only with the Leſſor, his Executors and Aſſigns; yet the Aſſignee of the Reverſion, being entitled to the Rent, ſhall have Covenant for it, as incident. *Per Hale*, 2 *Sand.* 371.

Or, covenanted with the Leſſor and his Heirs, without naming Aſſigns. *R. Mo.* 27, 159, 242. 1 *Lev.* 109. 1 *Sid.* 157.

So, if a Woman Leſſee takes Huſband, the Huſband ſhall have Covenant upon a Covenant in Law. *R.* 5 *Co.* 17. *a.*

Or,

Or, upon any expreſs Covenant by the Leſſor. 5 *Co.* 17. *a.*

So Tenant by Statute, *Elegit*, *&c.* tho' he comes to the Land by Act of Law. *Ibid.*

And where an Aſſignee ſhall have Covenant, it extends to an Aſſignee in Fact, or in Law.

And to an Aſſignee of an Aſſignee, *toties quoties.* 5 *Co.* 17. *b.*

And to the Executor or Adminiſtrator of an Aſſignee; or the Aſſignee of an Executor or Adminiſtrator. *Ibid.*

And Covenant lies by an Aſſignee, upon every Covenant, which concerns the Land; as, to pay Rent, not do Waſte, *&c.* *Vide Condition*, (O. 1, 2.)

So, upon a Covenant to leave the Lands in good Repair at the End of the Term. *R. Cro. El.* 600.

To make a Wall upon the Land. *R. Mo.* 159.

To enter to view the Repairs. 1 *Leo.* 62.

To make a new Leaſe at the Expiration of the firſt. *Mo.* 159.

But the *St.* 32 *H.* 8. 34. does not extend to collateral Covenants, which do not concern the Land demiſed: And therefore the Aſſignee ſhall not have Covenant for a collateral Covenant broken. 5 *Co.* 18. *a.* *Vide Condition*, (O. 1, 2.)

Nor if a Covenant be contingent, or upon a Poſſibility: As, that if the Leſſor upon his View finds the Lands, *&c.* well repaired at the End of the Term, he will make a new Leaſe. *R. per* 3 *J. Mo.* 27.

So an Aſſignee of an Apprentice by the Cuſtom of *London*, ſhall not have Covenant upon the original Indenture. *R. Sho.* 4.

So an Aſſignee of a Leaſe, which appears to be good only by Eſtoppel, ſhall not have Covenant. *R. Cro. El.* 437. *Mo.* 419.

So Covenant does not lie by an Aſſignee, for a Breach done before his Time.

Yet where a Breach is continuing, it ſhall be otherwiſe: As, if a Covenant be to repair within ſuch a Time after Notice; if the Leſſee does not repair upon Notice by the Aſſignee, Covenant lies, tho' it was out of Repair before the Aſſignment. *R. Mo.* 242.

So Covenant lies by an Infant againſt a Man of full Age; tho' there are mutual Covenants, and the Covenant by the Infant does not bind. *R.* 1 *Sid.* 446. *Vide Action upon the Caſe*, (B. 14.)

But Covenant does not lie by the Covenantee, after his Aſſignment of the Reverſion. *D.* 3 *Lev.* 154. *Vide Dett*, (D.)

(C) Againſt whom it lies.

(C. 1.) Againſt an Executor, or Adminiſtrator.

SO, if a Man covenants with *B.* and dies, an Action lies againſt his Executor, or Adminiſtrator upon it, tho' he he not named in the Covenant. 1 *Rol.* 519. *l.* 35, 40. *Dy.* 14. *a.* *Dub. Dy.* 114. *a.* *Cro. El.* 553.

So, in all Caſes, an Executor is bound by a Covenant, if it does not determine by the Death of the Covenantor. 1 *Rol.* 519. *l.* 33. 2 *Mod.* 269.

So, if he covenants for him and his Aſſigns: For an Executor, or Adminiſtrator is an Aſſignee. *R. Mo.* 44.

But it does not lie upon a Covenant in Law not broken until the Death of the Covenantor. *R. Dy.* 257. *a.*

Nor, if a Covenant be for a perſonal Act of the Teſtator, if the Breach be not in his Life-time.

So, if a Man covenants for him, his Executors and Aſſigns; Covenant lies againſt him, or his Executor, for a Breach done after Aſſignment of his Term to another, and Acceptance of Rent from the Aſſignee. *R.* 2 *Cro.* 309. *R.* 2 *Cro.* 522. 1 *Rol.* 522. *l.* 15, 30. *R. Cro. Car.* 188, 580. *Vide Ante*, (B. 3.)

[Tho' all the Eſtate of the Leſſee is aſſigned by Act of Parliament, (as in the Caſe of the *South-Sea* Directors) if there are no Words of Diſcharge, the Leſſee's

ſee's Executor is ſtill liable to covenant for the Rent. *Hornby* v. *Houlditch*, *M.* 11 *G.* 2. *Andr.* 40.]

And this, upon all Covenants in Fact, tho' it might be brought againſt the Aſſignee: For the Covenantee has an Election, in Covenants which bind the Aſſignee, to charge him or the Covenantor himſelf, tho' he has accepted Rent from the Aſſignee. *R. Jon.* 223.

But upon a Covenant in Law, after Aſſignment of the Term, and Acceptance of Rent from the Aſſignee, Covenant does not lie againſt the Aſſignor. *Jon.* 223. 1 *Sid.* 447.

[Againſt the Executor of a Joint-leſſee, if the Covenant is joint and ſeveral, even tho' he died before the Term commenced, and the whole Term, Intereſt and Benefit ſurvived to the other Leſſee. *Enys* v. *Donnithorne*, *T.* 1 *G.* 3. 2 *B. M.* 1190.]

(C. 2.) Againſt an Heir.

So, if he covenants for him and his Heirs, Covenant lies againſt their Heir. *Lut.* 287.

So, if Tenant in Fee leaſes for Years, and covenants for Enjoyment, and the Leſſee is ouſted by his Heir; Covenant lies againſt the Heir, in reſpect of the Privity, tho' he be not named. *Semb. Dy.* 257. *b.*

So, if a Leaſe be by the Word, *Demiſi.* 2 *Leo.* 104.

(C. 3.) Or an Aſſignee.

So, if a Man covenants to do a Thing, which has Exiſtence at the Time of the Demiſe, and relates to it; the Covenant runs with the Land, and binds the Aſſignee, tho' he be not named: As, if he covenants to pay the Rent reſerved.

To repair the Houſe demiſed. *R.* 5 *Co.* 16. *b.* 17. *b.* *R.* 5 *Co.* 24. *a. b. Dy.* 13. *b. in Marg.* *R. Cro. El.* 457, 552. *R.* 1 *Rol.* 521. *l.* 37.

To diſcharge the Leſſor of all Charges ordinary and extraordinary. 5 *Co.* 24. *b.*

To permit the Leſſor to have free Paſſage to two Rooms excepted by the Demiſe. *R.* 1 *Sal.* 196.

To leave ſo many Acres yearly *ſine Cultura*. *R.* 2 *Cro.* 125.

So, if a Man covenants to do a Thing which relates to a Demiſe, and covenants for him and his Aſſigns expreſly; this binds his Aſſignee, tho' the Thing had not Exiſtence at the Time: As, if a Leſſee covenants for him and his Aſſigns to build a new Wall upon the Land. *R.* 5 *Co.* 16. *b.*

[Covenant from Leſſee of Tithes for himſelf or Aſſigns not to let the Farmers have their Tithes, runs with the Tithes and binds the Aſſignee. *Bally* v. *Wells*, *M.* 10 *G.* 3. 3 *Wilſ.* 25.]

So Covenant lies againſt an Aſſignee of Part of an Eſtate in Leaſe, for a Breach on his Part. *R.* 1 *Rol.* 522. *l.* 5. *Cro. Car.* 222. *Jon.* 245.

So, if a Man covenants for him and his Aſſigns, ſo long as they ſhall be in Poſſeſſion; Covenant lies againſt the Aſſignee, if he continues in Poſſeſſion after the Term expired, tho' he he not ſtrictly an Aſſignee. *Semb. Sti.* 407.

So, if an Aſſignee of a Term covenants for him and his Executors, the Executor may be charged as Aſſignee. 1 *Sal.* 317.

But if a Man covenants for him and his Aſſigns to do a collateral Thing, which does not concern the Land, the Aſſignee ſhall not be charged for it: As, if a Leſſee covenants to build a Houſe upon other Land of the Leſſor. *R.* 5 *Co.* 16. *b.* *Jon.* 223. *Vide Condition*, (O. 1, 2.)

If a Leſſee covenants for him and his Aſſigns to pay Money to a Stranger. 5 *Co.* 16. *b.*

Or, a Collateral Sum to the Leſſor himſelf. *Ibid.*

So, if Goods are demiſed, and the Leſſee covenants for him and his Aſſigns, to leave them in as good Plight, or to pay ſo much for them; Covenant does not lie againſt the Aſſignee of the Goods: For there wants the Privity between him and the Leſſor, which there is when Land is demiſed. *R.* 5 *Co.* 16. *b.*

So, if Land be demiſed with Stock, *&c.* and the Leſſee covenants for him and his Aſſigns, to deliver the Stock at the End of the Term; Covenant does not lie againſt the Aſſignee, for the Covenant is merely perſonal, tho' the Rent was increaſed in reſpect of the Stock. 5 *Co.* 17. *a.*

So, if a Grantor of a Rent-Charge covenants to pay it free from Taxes; Covenant does not lie by the Heir of the Grantee, againſt the Aſſignee or Leſſee of the Land. *R.* 1 *Sal.* 198.

So, if a Biſhop covenants for him and his Succeſſors, the Succeſſor ſhall not be bound but only to the Covenant uſual in former Leaſes. *R.* 2 *Lev.* 68. 1 *Vent.* 223.

So, if a Leſſee covenants for him and his Aſſigns to pay Rent, and he aſſigns to *B.* and the Leſſor accepts the Rent of *B.* who afterwards aſſigns to *C.* Covenant does not lie againſt *B.* for Rent incurred after the Aſſignment to *C.* tho' the Leſſor had no Notice of the Aſſignment. *R. cont. per* 2 *J. in C. B. but the Judgment was reverſed in B. R. inter Pitcher and Tovy.* 4 *Mod.* 71. 3 *Lev.* 295. *Carth.* 177. *Vide Dett,* (E.)

So, if a Covenant be to build a Houſe before *Michaelmas* and after *Michaelmas* he aſſigns to *B.* Covenant does not lie againſt *B.* for it was broken before the Aſſignment. *R.* 1 *Sal.* 199.

[If Leſſee covenants to pull down old Houſes, and build new on the Ground within ſeven Years, and does not, but after ſeven Years aſſigns; Aſſignee is not liable, for the Covenant does not run with the Land, *Saint Saviour's* v. *Smith, H.* 2 *G.* 3. 3 *B. M.* 1271.]

For Pleading in a Writ of Covenant, *Vide Pleader,* (2. *V.* 1, &c.)

(D) Covenant, how expounded.

(D. 1.) In regard to the Context.

A Covenant ſhall be expounded with Regard to the Context, and Intent of the Deed; and therefore, if *A.* conveys a third Part of his Eſtate to *B.* for the Life of another, and covenants to do any Act, *&c.* for the better Aſſurance of his Eſtate to *B.* Such Covenant extends only to the better Aſſurance of the ſaid third Part to *B.* for the Life of the other. *R. Hob.* 275. *Vide Parols.* (A. 18.)

If a Covenant be, that a Jointure is, and ſhall continue of ſuch a Value, notwithſtanding any Act by him, the Words, *notwithſtanding any Act,* extend to the Value at the Time of the Jointure, as well as to the Continuance. *R. Cro. El.* 43.

If, upon the Marriage of his Daughter, a Man covenants to pay to Huſband and Wife 20 *l. per Ann.* it ſhall be underſtood, *for their Lives.* *R.* 1 *Sid.* 151.

If a Deed recites Legacies of 50 *l.* given to *A. C.* and *D.* and thereupon it is covenanted to pay to *A. B. C.* and *D.* the Legacies and Sums aforeſaid; he is not bound to pay 50 *l.* to *B.* to whom no Legacy was given. *R.* 2 *Vent.* 140.

If a Mortgage is made, upon Condition to be void upon Payment at ſuch a Day, and there be a Covenant or Obligation to perform all Covenants and Conditions in the Deed of Mortgage, an Action lies if he do not pay at the Day in the Condition. *R.* 2 *Lev.* 116.

[If *A.* demiſes Land to *B.* who by Deed-poll, covenants, that if *A.* ſhould give him Poſſeſſion of a Piece of Ground adjoining, or if he ſhould by any Ways have Poſſeſſion thereof, he ſhould pay for the demiſed Premiſſes and the ſaid Ground an additional Rent; if *B.* gets Poſſeſſion of ſaid adjoining Ground he ſhall pay the additional Rent, tho' it was by Leaſe from a third Perſon. *Heath* v. *Baker, M.* 10 *G.* 2. *B. R. H.* 319.]

[In a building and repairing Leaſe, a Covenant to *leave* the *demiſed* Premiſſes, with all new Erections well repaired, extends to new Erections only, if a Sum is agreed to be laid out in new Erections and rebuilding, and the *Covenant* to *keep* in Repair extends to new Erections only. *Lant* v. *Norris, P.* 30 *G.* 2. 1 *B. M.* 287]

(D. 2.) To Synonymous, and other Words.

So diſtinct Covenants ſhall be expounded with Regard to Covenants ſynonymous, or of the ſame Nature, in the ſame Deed: As, if a Man covenants that notwithſtanding any Act by him, he is ſeiſed in Fee; that he has Power to ſell; the laſt ſhall be expounded, that he has done nothing to defeat his Power to ſell, tho' it be diſtinct from the firſt. *Semb. per* 3 *J.* 3 *Lev.* 46.

So a Covenant ſhall be conſtrued according to the Import of the Words: As, if a Leſſor covenants, that the Leſſee ſhall enjoy without Interruption, except by the King, his Heirs or Succeſſors; an Interruption by a Patentee ſhall be a Breach, for he is not excepted. *R. Cro. El.* 517, 8. *Vide Condition*, (E.—G. 12, &c.—M. 1, &c.)

If a Covenant be, that he ſhall not be evicted during the Term; if the Leaſe be by Indenture *1ſt May* for nine Years next, an Eviction after the Leaſe commenced in Computation will be a Breach, tho' it was before the Delivery. *R.* 1 *Sid.* 374.

If a Condition of an Obligation be, that he permit his Wife to deviſe 100 *l.* to be paid out of his perſonal Eſtate, *&c.* he ought not only to permit the Deviſe, but to pay the Legacy. *R. per* 3 *J.* 2 *Rol.* 247. *l.* 50.

Covenant that he will not interrupt *B.* in the Enjoyment of a Cloſe; if he erects a Gate which interrupts, it will be a Breach, tho' he has a Right to erect it. *R.* 2 *Mod. Ca.* 319.

If a Joint-tenant grants *totum Statum* in a Mill (by which a Moiety paſſes) and the Survivor, ſuppoſing that he has the Whole by Survivorſhip, grants *totum Molendinum*, with a Covenant that the Leſſee ſhall enjoy without Interruption by him; it will be a Breach, for the Covenant extends to the whole Mill. *R.* 2 *Cro.* 233.

So the Words of a Covenant ſhall be reſtrained to the Meaning of the Phraſe at the Time of the Covenant: As, if a Biſhop, *Anno* 1635, covenants to pay all Taxes during the Term; this ſhall be reſtrained to Synodals, *&c.* then uſually paid, and does not extend to Taxes by Parliament *Anno* 1665. *R.* 2 *Lev.* 68.

If a Leſſor covenants to indemnify the Leſſee from all Duties, Charges, and Taxes to be impoſed on the Land, except Tithes; it does not extend to the Poor's Rate, which is not a Charge upon the Land, but upon the Perſon in reſpect of his Ability. *R. F, g.* 297.

But a Covenant to pay ſo much clear of all Taxes extends to Parliamentary Taxes. *R. per* 3 *J. Holt, cont.* 1 *Sal.* 221.

And the Words of a Covenant ſhall not be extended to Things of common Right, if they may be otherwiſe ſatisfied: As, a Covenant, that Land ſhall be diſcharged of all Rents, does not extend to a Rent-Service. 3 *Leo.* 44.

So reſtrictive Words in the Beginning or End of a Sentence, which in good Senſe may be applied to ſeveral Sentences, ſhall extend to them all. 1 *Sand.* 60.

But ſeveral and diſtinct Covenants ſhall not be reſtrained the one by the other: As, if *B.* covenants, that notwithſtanding any Act by him, he has good Power to convey for a Jointure, and that the Lands conveyed are of the Value of 200*l.*; the latter Covenant is abſolute, and not reſtrained to any Act by him. *R. Jon.* 403. *Lit.* 185. *in Marg.*

If *A.* covenants with his Leſſor, that he will pull down three Meſſuages, and erect three new ones, and that he *omnia Meſſuagia fore erect.* will leave well repaired at the End of the Term; if he erects four Meſſuages where he pulled down the three, he ought to leave the four well repaired: For the latter Covenant is diſtinct, and not reſtrained by the former. *R.* 2 *Vent.* 128. 3 *Lev.* 265.

If a Covenant be, upon reaſonable Requeſt to ſurrender ſuch an Eſtate to *B.* and alſo to permit him to enjoy the Profits; he ought to permit the Taking of the Profits, without Requeſt, for they are diſtinct Clauſes. *R.* 2 *Rol.* 248. *l.* 50.

If *A.* covenants, that he has a good Eſtate in Fee, and that he has Power to convey notwithſtanding any Act by him, *&c.* the former Covenant, *that he has a good Eſtate*, is not reſtrained by the Words, *notwithſtanding any Act.* *R.* 2 *Rol.* 250. *l.* 5.

So

So, tho' the Covenants are not diſtinguiſhed by diſtinct Clauſes, if they be ſeveral in their Nature: As, if a Leaſe for Years, if *A. B.* and *C.* ſo long live, be aſſigned to *D.* with a Covenant, that he has a ſufficient Eſtate for the Reſidue of the Term, *if A. B. and C. ſhall ſo long live, and they are yet in Life*; Tho' he does not ſay, *and that they are, &c.* yet it is a diſtinct Covenant, and it will be a Breach if any of them was dead. *R.* 2 *Rol.* 249. *l.* 10.

If *A.* covenants that he and his Wife will levy a Fine to *B.* and *C.* and their Heirs, and at their Charges; the latter Words make a diſtinct Covenant, for *A.* cannot covenant to levy a Fine at the Charge of the Conuſees. *R.* 2 *Rol.* 251. *l.* 5.

So Words in the Middle of a Sentence cannot in good Senſe be extended to other Sentences: As, if *A.* covenants to deliver a Terrier of his Lands, and to make Oath upon Requeſt of the Truth of it, and to deliver the original Leaſe; there is no Need of a Requeſt for the Delivery of the Leaſe. *R.* 2 *Rol.* 250. *l.* 10.

(E) Breach of Covenant.

(E. 1.) What ſhall be.

WHAT ſhall be a Breach of a Covenant to make Aſſurance, *Vide Condition*, (H.)

What, a Breach of a Covenant to keep indemnified, *Vide Condition*, (I.)

Of a Covenant for Enjoyment, without Interruption or Moleſtation, it ſhall be a Breach, if the Covenantor proſecutes him in a Court of Equity. *R. cont. Mo.* 859. *Semb.* 2 *Vent.* 213. *Vide Condition*, (M. 1. Q.)

If the Covenantor himſelf wrongfully diſturbs him. *Vide Condition*, (G. 12. M. 1.)

Otherwiſe, if a Stranger interrupts wrongfully, without Title. *Vide Condition*, (E.)

If a Leſſor covenants with the Leſſee, that the Land ſhall continue to him of the Value of 200*l.* during the Term; it will be a Breach, if the Leſſor ouſts him, for then it cannot continue of ſuch Value. *R. Jon.* 360.

If a Huſband ſeiſed in Right of his Wife covenants, that he and his Wife have a Right to aſſure, it ſhall be a Breach, if the Wife be within Age. *R.* 2 *Jon.* 195, 6.

So, if a Covenant be to convey free from Incumbrances; it ſhall be a Breach if he makes a fraudulent Conveyance, tho' it is void as to a Purchaſer by the *St.* 27 *El.* 4. *R.* 2 *Cro.* 131.

So, if it be, that the Land is free from all Incumbrances; a Grant by Copy of the ſame Land will be a Breach. *Sav.* 74.

So, if a Covenant be, that Land ſhall be *clare exonerata ab omnibus prioribus titulis jur' & oneribus, &c.* if there was a former Leaſe to the Feoffee *quamdiu ſola manſerit*, and that if ſhe married, her Son ſhould have it; if the Feoffee marries, and the Son enters, it ſhall be a Breach of Covenant, tho' the Charge was future and contingent. *R.* 1 *Leo.* 93.

So, if a Covenant be, that the Land is diſcharged, and a Rent-charge was before granted to commence at a Day to come. 1 *Leo.* 93.

(E. 2.) If the Thing be prejudiced before Performance. *Vide Condition.* (M. 1.)

If a Man acts contrary to the Intention of the Covenant, it ſhall be a Breach, tho' he performs the Words of the Covenant: As, if a Covenant be to deliver a Recognizance to be cancelled; it is a Breach if he extends it before, tho' it be afterwards cancelled. *R. Ray.* 25. 1 *Sid.* 48.

If a Brewer covenants to deliver all his Grains for the Cattle of the Plaintiff; and he puts Hops to them before Delivery. *R. Ray.* 464.

If a Man covenants to leave all the Trees upon the Land; and he cuts them down, and leaves them there. *Ray.* 464.

So it ſhall be a Breach of Covenant, if the Covenantor be diſabled to perform. *Vide Condition*, (M. 2, &c.)

(E. 3.) What not.

But a Covenant ſhall not be broken, if a Man does an Act, which by Conſequence may be a Breach, if the Breach does not actually follow: As, if *A.* covenants to maintain every Action in her Name, without Releaſe or Countermand; if *A.* after an Action commenced takes Huſband, it is not a Breach, tho' the Writ be abateable, if it be not abated by Judgment. *R.* 1 *Leo.* 169.

If *A.* covenants that *B.* ſhall enjoy a Leaſe aſſigned, free from Arrears of Rent; if Rent be in Arrear, it ſhall not be a Breach, where no Damage accrues thereby to *B.* by Suit, or otherwiſe. *R.* 1 *Sal.* 196.

So, if an Obligation be, to indemnify from Rent in Arrear, or Money due by Obligation, after the Arrears incurred, or the Obligation broken. 1 *Sal.* 197.

So a collateral Thing ſhall not be a Breach, tho' it be within the Words of the Covenant: As, if *A.* covenants that *B.* ſhall enjoy without any Moleſtation; a Suit in *Chancery* againſt him to ſtay Waſte is no Breach, tho' the Bill be diſmiſſed; for it is a collateral Thing. *R.* 2 *Vent.* 214.

So a Covenant ſhall not be broken by a ſubſequent Act, to which the Words do not extend: As, if a Covenant be, that *A.* ſhall enjoy free from prior Incumbrances, except Eſtates for the Life of *B.* and *B.* afterwards grants by Copy for three Lives, for, tho' this extends beyond the Life of *B.* it is not a prior Incumbrance. *R. Sav.* 74.

So a Covenant ſhall not be broken by a Thing which happens by the Act of God, if it be repaired in convenient Time: As, if a Leſſee covenants to repair a Wall againſt a River, ſo that a Meadow ſhall not be overflowed; if by an outrageous and ſudden Flood the Wall be thrown down and the Meadow overflowed, it is not a Breach, if it repaired in due Time. *Per* 2 *J. Dy.* 33. *a.*

So a Covenant to do an unlawful Thing ſhall be void: As, to permit his Eſcape. *Hob.* 14.

To indemnify from an Eſcape, which he has permitted. *Ibid.*

(F) Covenant, How defeated.

IF the Foundation of the Covenant fails, the Covenant alſo fails: As, if a Leaſe be agreed on and the Leſſee executes his Part, but the Leſſor does not execute his Part, whereby there is not any Leaſe; the Covenants in the Indenture ſealed by the Leſſee, and alſo the Bond for Performance of Covenants, are void. *R. Yel.* 18.

So, if a Leaſe be made, and afterwards ſurrendered, the Covenants contained in the Leaſe become void. *Yel.* 19.

So, if a Leaſe be void, the Covenants contained in the Leaſe, and the Bond to perform the Covenants, are alſo void: As, if a Man grants ſo much of a Term as ſhall be at his Death, and the Grantee aſſigns it; the Grant being void for Uncertainty, the Covenants in the Aſſignment are alſo void. *R. Ray.* 27. *R.* 3 *Lev.* 193. 1 *Lev.* 45.

So, if Tenant for Life, or in Tail, leaſes for twenty Years, and covenants by *demiſi*, and dies within the Term, Covenant does not lie. *R.* 1 *Leo.* 179.

So, if a Leaſe be extended for the King's Debt, a Covenant to pay the Rent to the Leſſor is void. *Sav.* 132.

If a Leſſor ouſts his Leſſee, he ſhall not have Covenant againſt him for the Rent.

Nor againſt *A.* who gave a Bond, that the Leſſee ſhould pay Rent for the Occupation of the Lands. *R.* 3 *Leo.* 159.

So, if an Obligation be for Performance of ſuch and ſuch Covenants in an Indenture, Part of which are void by the *St.* 5 *Ed.* 6. 16. againſt buying Offices; an Action does not lie, for, tho' Part of the Covenants may be lawful, the Obligation ſhall be void for the Whole. *R. Cro. El.* 529.

So,

So, in all Caſes, where Part of the Condition is void by Statute. *R. Hob.* 14.

[A Covenant not to marry any other Woman, and if he does, to pay Plaintiff 1000 *l.* is a Reſtraint of Marriage, illegal and void; and if on Plea of *non eſt factum*, there is a Verdict for Plaintiff, Judgment ſhall be arreſted. *Lowe* v. *Peers*, P. 8 G. 3. *Affirmed in Exchequer Chamber*, P. 1770. 4 *B. M.* 2225.]

But where Part is void by the Common Law, and other Part is good, the Obligation ſhall be good. *R. Hob.* 14. *Mo.* 856. *R. Cart.* 230.

But if a Leaſe becomes void, Covenant lies for a Covenant broken before: As, if a Leaſe be upon Condition to be void for Non-payment of Rent; an Action lies for Rent due before. *Cro. El.* 78. *R. Cro. El.* 244.

So, if a Parſon makes a Leaſe, and afterwards becomes Non-reſident, he ſhall have Covenant for a Breach before. *Cro. El.* 78, 245. *Dub. Dy.* 373. *a. but there acc. per Nich. in Marg.*

So Covenant lies for a Breach in Non-performance of a Thing, which makes the Leaſe void; as, if a Man covenants by Indenture to give a Bond, *&c. Proviſo that upon Failure the Indenture ſhall be thenceforth void*; Covenant lies for not giving the Bond, for the Intent was, that it ſhould be void as to all Covenants *in futuro*. *R. Cro. El.* 77.

So, if a Leaſe be void, Covenant lies upon a collateral Thing: As, if a Dean and Chapter leaſe to *A.* and afterwards leaſe to *B.* and covenant, that they have Power to leaſe; Covenant lies, tho' the Leaſe to *B.* was void, for it was broken immediately by the making of the Leaſe. *R. Ow.* 136. 2 *Dan.* 228. 1 *Brownl.* 21.

So, Covenant that the Leſſee ſhall enjoy, ſhall be indemnified, *&c. Ow.* 136.

So, if a Bargain and Sale be to *A.* and his Heirs, upon Condition to be void, upon Payment by the Bargainor of ſo much Money, and he covenants that he will pay; tho' the Deed be void for not inrolling within ſix Months, *A.* ſhall have Covenant for Non-payment of the Money. *R.* 1 *Sal.* 199.

So, if there be a Covenant to do a lawful Thing, and afterwards by Act of Parliament the Thing be prohibited, the Covenant ſhall be defeated. *R.* 1 *Sal.* 198. *R. cont.* 3 *Mod.* 39.

So, if a Covenant be, that he will not do, what a Statute afterwards requires him to do. 1 *Sal.* 198.

But if a Covenant be, that he will not do a Thing then unlawful, tho' a Statute afterwards makes the Thing lawful, the Covenant is not repealed. 1 *Sal.* 198.

So, if a Covenant be to find eight Men to grind at a Mill, and that the Leſſee ſhall deduct it out of his Rent; if the Leſſee makes it a Horſe-Mill, by this Alteration the Covenant is diſcharged. *R.* 2 *Cro.* 182.

(G) Covenant to ſtand ſeiſed.

(G. 1.) When it ſhall be good.

IF a Man covenants or agrees for him and his Heirs, with another and his Heirs, that upon ſuch Conſideration the other ſhall have his Lands or Tenements; tho' the Land does not paſs for Want of Livery, *&c.* yet the Covenantee ſhall have the Uſe and Profits, and now the Poſſeſſion is executed to the Uſe by the *St.* 27 *H.* 8. 10. *Pl. Com.* 301. *b.* 303. *a.* *Vide Bargain and Sale*, (B. 1, &c.)

Tho' he covenants, that at a future Day, as next *Eaſter*, *&c.* he will ſtand ſeiſed. *R.* 2 *Cro.* 180. *Vide Uſes.*

Tho' the Covenantor was ſeiſed only in Reverſion, or Remainder. 2 *Co.* 15. *a.*

But ſuch Covenant ought to be by Deed; for an Uſe ſhall not be raiſed by *Parol. Adm. cont. Pl. Com.* 303. *a. Dub. Cro. El.* 345. *R. acc. Mo.* 688. *Poph.* 48, 50. *R. per tot. Cur. Dy.* 296. *b. R. ſæpe* 2 *Rol.* 788. *l.* 20. *R. ſæpe* 1 *Vent.* 140. *R.* 1 *Sid.* 26, 82. *Vide Ante*, (A. 1.)

So it ought to be a Covenant with another and his Heirs; for otherwiſe it is but a perſonal Covenant, which does not raiſe an Uſe. *D.* 1 *Sid.* 26.

And, with a Perſon capable; for with his Wife is not good. 2 *Rol.* 788. *l.* 40. *Co. L.* 112.

So the Covenantor ought to be ſeiſed at the Time of the Covenant; otherwiſe he cannot ſtand ſeiſed to the Uſe of another; and therefore, a Covenant to ſtand ſeiſed of Lands, which he ſhall afterwards purchaſe, is void. *R. Mo.* 342. *R.* 2 *Rol.* 790. *l.* 30, 40. *R. Cro. El.* 401. *Win.* 60. *Fig.* 237.

Or, of ſuch Land in particular, which he ſhall thenafter purchaſe. 2 *Rol.* 790. *l.* 37.

So, if a Joint-tenant covenants to ſtand ſeiſed of the Moiety of his Companion after his Death; it is void, tho' he ſurvives. *R.* 2 *Rol.* 790. *l.* 45. *Mo.* 776.

Or if one covenants to ſtand ſeiſed of ſo much Land as is worth 20*l. per Ann. R. Het.* 147.

[But a man ſeized may covenant to ſtand ſeized to the Uſe of another after Covenantor's Death. *Roe* v. *Tranmer*, *T.* 30 & 31 *G.* 2. 2 *Wilſ.* 75.]

So the Covenant ought to be, that he himſelf will ſtand ſeiſed, *&c.* tho' the Uſes do not ariſe until after his Death; for a Covenant that his Heir ſhall ſtand ſeiſed is not good. *Per Hob. Hob.* 313.

Or, that he will levy a Fine to his Son, who ſhall ſtand ſeiſed, *&c. R.* 3 *Lev.* 306.

(G. 2.) By what Words.

So there ought to be apt Words and a manifeſt Intent: And therefore, if the Words are future and obligatory, and not *in præſenti* and declaratory, no Uſe ariſes. *D. Ray.* 48. *Win.* 36, 60. *Adm. Pol.* 535.

So, if the Words ſeem intended for another Purpoſe: As, if a Man covenants, that another ſhall enjoy free from Incumbrances; it does not amount to a Covenant to ſtand ſeiſed. *R.* 1 *Sid.* 26. *Adm. Ray.* 48.

So Articles of Agreement by which a Man covenants, grants, bargains, and ſells, *&c.* do not amount to a Covenant to ſtand ſeiſed; for they are only preparatory to a ſubſequent Conveyance. *R. Ray.* 43. 1 *Sid.* 82.

So a Covenant to levy a Fine, which and all Fines ſhall be, and the Covenantor ſhall ſtand ſeiſed, to the Uſe of *B.* does not amount to a Covenant to ſtand ſeiſed. *R.* 3 *Lev.* 126. *Adm. Win.* 36.

So, Articles, by which a Mother grants and demiſes to her Son. 2 *Lev.* 214. *R.* 1 *Lev.* 56.

So, a Covenant to levy a Fine to a Son, and that the Land ſhall remain to the Son free from Incumbrances. *R.* 3 *Lev.* 306.

To make an Eſtate to *A.* and *B.* and that all Eſtates ſhall be to the Uſe of the ſame Indenture. *R. Dal.* 112.

So, if the Intent of the Covenantor appears uncertain: As, if a Man, in Conſideration of Marriage, covenants that Land ſhall deſcend, remain, and come, *&c.* for it does not appear, whether he intends that he ſhall have it by Deſcent, or by Way of Remainder. 2 *Rol.* 788. *l.* 50. *Vide* 2 *Lev.* 77. *R. Bend. pl.* 153. 1 *And.* 25.

So, if he covenants, or gives, and grants Land after his Deceaſe; for it does not appear that he intended to make himſelf Tenant for Life. *R.* 2 *Rol.* 788. *l.* 45. 789. *l.* 5. *R.* 1 *Sid.* 3. *Semb. cont.* 2 *Lev.* 77, 226.

So, if for Affection he gives, or grants Lands, of which he was ſeiſed in Reverſion after an Eſtate for Life to *B.* and his Heirs, to the Uſe of *D.* and his Heirs; for the Uſe is not limited to *B.* but was intended to ariſe out of his Eſtate, which cannot be. *R.* 1 *Sid.* 26. *R.* 2 *Vent.* 319.

If *Ceſtuy que Uſe* in Tail, 14 *H.* 8. covenants, that he or his Feoffees will not make an Eſtate, levy a Fine, *&c.* but that the Lands, after his Death, ſhall deſcend to his Son; this does not raiſe an Uſe, but is a Covenant only. 3 *Leo.* 6. *Bend. pl.* 153.

So, if another Sort of Conveyance ſeems intended, it ſhall not be conſtrued to be a Covenant to ſtand ſeiſed: As, if a Man gives, or bargains and ſells Land to his Son, without more; no Uſe ariſes by Way of Covenant. *Cro. El.* 394. *Semb.* 2 *Cro.* 127.

If he covenants, that after his Death the Land ſhall remain and be to his Son, and his Wife. *R. Win.* 60. *R. Cro. El.* 279.

So, if a Man makes a Charter of Feoffment, with a Letter of Attorney to make Livery, and Livery is not made; it does not operate by Way of Covenant. 8 *Co.* 94. *R. cont.* 2 *Lev.* 213.; but there was a Blank for the Name of the Attorney.

So, if by Deed inrolled in Conſideration of Marriage, he gives, grants, and confirms, and inſerts a Letter of Attorney to make Livery. *Agr.* 2 *Rol.* 787. *l.* 12. *Cont.* 2 *Lev.* 213. *Adm. Pol.* 532.

[Yet if the Covenanter is ſeized in Fee, and there are apt Words (as *Grant*) a plain Intent, and a proper Conſideration (as naming one, the eldeſt Son of his well beloved Uncle) a Releaſe (void as ſuch, becauſe a Grant of Freehold to commence *in futuro*) ſhall take Effect as a Covenant to ſtand ſeized. *Roe* v. *Tranmer*, *T.* 30 & 31 *G.* 2. 2 *Wilſ.* 75.]

Yet the Word, *Covenant*, is not neceſſary, if there be Words equipollent, 1 *Vent.* 140. 2 *Rol.* 789. *l.* 30.

And therefore, if a Man in Conſideration of Marriage, gives, grants, and confirms Land to *A.* and his Heirs, to the Uſe of him and his Heirs; it ſhall be good by Way of Covenant. *R.* 2 *Rol.* 787. *l.* 5. *R.* 3 *Mod.* 237.

[If *A.* ſeized in Fee, in Conſideration of Marriage to be had between him and *B.* by Indenture between *A.* one Part. and *B.* and *C.* other Part, *gives, grants, infeoffs, aliens and confirms* to *B.* and *C.* and their Aſſigns, the Lands then in his Poſſeſſion, *Habend.* to the Uſe of *B.* for Life, Remainder to the Heirs of her Body by *A.* who *covenants the Lands ſhall remain to the ſaid Uſes, clear of Charges*; this ſhall operate as Covenant to ſtand ſeized, and *B.* has an Eſtate in Special Tail, *A.* an Eſtate for Life by Implication, and the Reverſion in Fee. *Doe* v. *Aſſigns of Simpſon*, *T.* 28 & 29 *G.* 2. 2 *Wilſ.* 22.]

So, if a Father, for natural Affection, gives Land to his Son; tho' Livery be indorſed and not executed. *Ray.* 49.

[If a Father by Deed in Conſideration of natural Love grants Lands after his Deceaſe to his two Children, it is a Covenant to ſtand ſeized. *Rigden* v. *Vallier*, *H.* 1750. 2 *Vezey* 252.]

So, if for Affection he grants and aſſigns a Rent in Fee; tho' this be a Conveyance at Common Law. *Ray.* 48. 2 *Vent.* 150. *R.* 3 *Lev.* 372.

So, if he grants, bargains, ſells, enfeoffs, and confirms Land; tho' there be a Clauſe of Warranty in the Deed, and a Covenant for Enjoyment when the Eſtate ſhall be executed. *R.* 1 *Vent.* 137. 1 *Mod.* 175. 2 *Lev.* 10.

So, in all Caſes, where the Intent appears, that the Covenantee ſhall have the Eſtate, if the Deed be defective, it ſhall be conſtrued a Covenant to ſtand ſeiſed: As, if a Son covenants, that if he dies without Iſſue, he gives and grants the Land to his Mother. *R.* 2 *Lev.* 226. 3 *Lev.* 372. 2 *Jon.* 105. *Pol.* 527. *Carth.* 39.

If a Man gives, and grants a Rent to *A.* and his Heirs, *Habendum* after his Death, if he dies without a Son then living. *R.* 3 *Lev.* 370.

If he covenants, that after the Death of him and his Wife the Land ſhall deſcend and be to his Son and his Wife. *Semb. Win.* 37.

If he enfeoffs Truſtees, and grants to them to ſtand ſeiſed to the Uſe of his Brother, and there be no Livery. 1 *Ver.* 141. But there was in the Deed an expreſs Covenant that the *Ceſtuy que Truſt* ſhould enjoy.

(G. 3.) Upon what Conſideration.

So there ought to be a ſufficient Conſideration, otherwiſe no Uſe ariſes.

(G. 3.) What ſhall be a good one.

And the Conſideration proper for raiſing an Uſe by Way of Covenant, is for Love and Affection.

In

In Conſideration of his brotherly Love. *Pl. Com.* 309. 2 *Rol.* 785. *l.* 20.

In Conſideration of Marriage had, or intended. *Per Twiſd.* 1 *Sid.* 83. *Pl. Com.* 301. *b.*

So, for Advancement of his Blood or Kin, *&c.* *Pl. Com.* 309.

That the Lands ſhould continue in his Name, or Blood. *Pl. Com.* 309. 2 *Rol.* 785. *l.* 50.

That they ſhould deſcend to his Heirs Male, *&c.* *Pl. Com.* 309. *b.* 2 *Rol.* 785. *l.* 40. 7 *Co.* 13. *b.*

So, Payment of Debts, *&c.*

In Conſideration that he was bound for him in ſeveral Recognizances. *Semb. Cro. El.* 394.

That he will enfeoff him of ſuch Land. *Win.* 59.

And it is ſufficient, if a Conſideration appears by the Import of the Deed, tho' it be not expreſſed: As, if a Man covenants to ſtand ſeiſed to the Uſe of his Son, Daughter, Wife, Brother, *&c.* 7 *Co.* 40. *R.* 1 *And.* 79.

To the Uſe of his Mother. *R.* 2 *Jon.* 105.

So, if a Man for Love to his Son, covenants to ſtand ſeiſed to the Uſe of himſelf for Life, and afterwards to his Wife for Life, and afterwards to his Son, *&c.* an Uſe ariſes to his Wife (being named his Wife) tho' another Conſideration is expreſſed. *R.* 2 *Rol.* 782. *l.* 40. 7 *Co.* 40.

So, if a Conſideration expreſſed for one extends to another, to whom by the Covenant the Eſtate is limited in the ſame Deed, it is ſufficient: As, if a Man, in Conſideration of Affection to his eldeſt Son, covenants to ſtand ſeiſed to the Uſe of him in Tail, and afterwards to the Uſe of his younger Son, *&c.* an Eſtate ariſes to the younger Son; for the Conſideration expreſſed to the elder extends to the younger Son. *R.* 2 *Rol.* 783. *l.* 5.

If, in Conſideration of Affection to his Brother, he covenants to ſtand ſeiſed to the Uſe of his Brother and his Wife. for their Lives; this extends to the Wife of his Brother. 2 *Rol.* 783. *l.* 50. 786. *l.* 10.

So, in Conſideration that he will marry his Daughter, a Covenant to be ſeiſed to the Uſe of both. 2 *Rol.* 784. *l.* 5, 15.

So, in Conſideration of Affection to his Son, extends to the Wife of his Son. 2 *Rol.* 784. *l.* 10. 2 *Cro.* 168.

So, if an Eſtate be limited to ſeveral, upon a Conſideration which extends only to one, the Uſe of the Whole ariſes to him: As, if a Man, in Conſideration of Affection, covenants to ſtand ſeiſed to the Uſe of *B.* his Brother, *D.* and *C.* in Truſt, *&c.* tho' *D.* and *C.* are Strangers, to whom the Conſideration does not extend, *B.* ſhall have the Whole. *R.* 2 *Rol.* 783. *l.* 15. *Vide Poſt,* (G. 5.)

So, if ſome Conſiderations expreſſed are good, and ſome not, it is ſufficient: As, in Conſideration of 100*l.* and a Rent to be granted; tho' the Conſideration of the Rent is executory, and therefore not good, the Uſe ariſes upon the other Conſideration of 100*l.* *R. Mo.* 547, 8.

So a Grant, in Conſideration of Affection, and alſo of Money, ſhall be good by Way of Covenant. *R.* 3 *Lev.* 292.

So a Conſideration conſiſtent with the Deed, or with the Conſiderations expreſſed, may be averred. 2 *Co.* 76. 2 *Rol.* 786. *l.* 45. 790. *l.* 5. 7 *Co.* 40.

As, if in Conſideration of continuing the Eſtate in his Family, *&c.* a Man covenants to ſtand ſeiſed to the Uſe of *B.* it may be averred, that *B.* is of his Kin. *F,g.* 301.

So, if the Conſideration expreſſed is not ſufficient to raiſe an Uſe, it may be averred to be made upon other Conſiderations, which are good. 2 *Rol.* 790. *l.* 10.

[*Contra* if no Conſideration is mentioned in a Deed, you may enter into Proof of Conſideration; but if any Conſideration is mentioned, and not ſaid for *other Conſiderations*, you cannot prove any other. *Peacock* v. *Monk*, 1748. 1 *Vezey* 127.]

But

But if the Conſideration be too general, it is not ſufficient: As, if a Man, for divers good and valuable Conſiderations, covenants to ſtand ſeiſed; no Uſe ariſes. 2 *Rol.* 786. *l.* 35. *R.* 1 *Co.* 176. *a.* *Mo.* 145. *R.* 2 *Co.* 15. (G. 4.) What not. If it be too general, or does not import a Real Conſideration.

So, if the Conſideration mentioned does not import *quid pro quo:* As, in Conſideration of long Acquaintance, or being School-fellows, *&c.* *Pl. Com.* 302. *a.* *R.* 2 *Rol.* 783. *l.* 35.

Or, being Chamber-fellows, or, intire Friends. *R.* 2 *Rol.* 783. *l.* 30.

In Conſideration, that the King is the Head of the Common-wealth, hath the Charge of preſerving Peace, repelling Hoſtilities, *&c.* *R.* 2 *Co.* 15. *Semb.* 1 *And.* 141.

In Conſideration of Love and Affection to him who is not his Kin,

Or, to his Baſtard, or Natural Son. *Co. L.* 123. *a.* *R.* 2 *Rol.* 785. *l.* 25, 30.

So, if it be, in Conſideration that *A.* out of the Profits of the Lands ſhall pay his Debts; it is not ſufficient to raiſe an Uſe to *A.* for he gives Nothing. *R. Mo.* 194. 1 *Leo.* 195.

Yet, if a Covenant be, in Conſideration of Marriage, to *A.* and *B.* and the Heirs of their Bodies, *&c.* and afterwards there be a Feoffment and Fine to the ſame Uſes; tho' the Marriage does not take Effect, but *B.* (the Woman) marries another, ſhe ſhall take a Moiety for Life; for by the Fine, *&c.* the Uſes are fixed in *A.* and *B.* *R. Jon.* 346. (*Vide* 2 *Rol.* 795. *l.* 5.)

So, if a Man be a Stranger to the Conſideration, no Uſe ariſes to him; as, if a Man, in Conſideration of Marriage between his Son and *A.* covenants to ſtand ſeiſed to the Uſe of them for Life, Remainder to *C.* the Remainder is void. *Pl. Com.* 307. *b.* 2 *Rol.* 784. *l.* 20. (C. 5.) If the Covenantee be a Stranger to the Conſideration.

If, for Payment of Debts, *&c.* he covenants to ſtand ſeiſed to the Uſe of himſelf for Life, and afterwards to *A.* for Years; the Eſtate to *A.* is void, if he was not Executor. *R.* 2 *Rol.* 784. *l.* 35. 1 *Co.* 154. *a.* 1 *Leo.* 195. 1 *And.* 260.

If, for Advancement of his Blood and Marriage of his Baſtard, he covenants, *&c.* no Uſe ariſes to the Baſtard; for ſhe is *Filia Populi*, and a Stranger. 2 *Rol.* 785. *l.* 25. 1 *And.* 79. *Vide Baſtard*, (E.)

If, for Advancement of his Blood, Name, and Iſſue, he covenants to ſtand ſeiſed to his firſt, ſecond and other Sons in Tail, Remainder to the King; the Remainder to the King is void, for want of a Conſideration. *R. Mo.* 195. 2 *Co.* 15.

If, in Conſideration of the Marriage of his Son with *A.* without ſaying, for a Settlement in his Name or Blood; no Eſtate ſhall ariſe to himſelf, for the Father is a Stranger to this Conſideration, which was perſonal to the Son. 1 *Brownl.* 193.

So, if in Conſideration of natural Affection, a Man covenants to ſtand ſeiſed to himſelf for Life, with Power to make Leaſes, *&c.* a Leaſe to a Stranger is void, for he is not within the Conſideration, upon which the Power was founded. *R.* 2 *Rol.* 260. *l.* 30. 2 *Cro.* 181.

So, if it be in Conſideration of Marriage, with Power to make Leaſes, and the Huſband leaſes to a Stranger; the Leaſe is void as to the Wife. *R.* 1 *Lev.* 30.

So, if one Covenantee be a Stranger, and the other not, the Whole veſts in the other: As, if *A.* for natural Love, covenants with *B.* his Brother, *C.* and *D.* to ſtand ſeiſed to the Uſe of the Covenantees and their Heirs, in Truſt to raiſe Portions for his Iſſue; the whole Uſe veſts in *B.* his Brother, to whom the Conſideration extends, not to the others. *R. Jon.* 419. 2 *Rol.* 783. *l.* 15.

Tho' the Limitation was, upon Truſt to raiſe Portions, the Eſtate veſts, which is not deſtroyed by the Truſt; but the Eſtate ſhall be ſubject to the Truſt in Equity. *R. Jon.* 419.

And if the Truſt becomes impoſſible by the Act of God, the Eſtate ſhall be abſolute in the Truſtee. *Ibid.*

So, if in Conſideration of Affection to his Wife, a Man covenants to be ſeiſed to him for Life, afterwards to his Wife for Life, afterwards to ſuch as his Wife ſhall appoint; the Conſideration does not extend to a Stranger to whom the Wife ſhall appoint it. *Semb. F,g.* 300.

[If *A.* in Conſideration of Love and Affection to his Wife, covenants to ſtand ſeized to the Uſe of them, and the Survivor for Life, Remainder to their Iſſue, Remainder to ſuch Perſon as Wife ſhall diſpoſe to, and for want of ſuch Diſpoſition to *B.* which *B.* is Nephew to *A.* tho' not named as ſuch in the Deed, and the Wife after *A.*'s Death without Iſſue conveys to *D.* *D.* has no Title, as being a Stranger, and *B.* has a Title, as being named in the Deed, he may aver himſelf within the Conſideration. *Goodtitle* v. *Petto*, *P.* 5 *G.* 2. *Str.* 934.

So, if a Man, in Conſideration of Marriage and 100*l.* paid, covenants to ſtand ſeiſed to *A.* and *B.* his intended Wife; no Uſe ariſes, tho' the Money be paid, if the Marriage does not take Effect; and the Marriage was the Principal, and the Money only Acceſſary to it. *R. Mo.* 102.

So, if the Conſideration be contingent or future, no Uſe ariſes till it happens: As, if a Man, in Conſideration of his Marriage with *B.* covenants to ſtand ſeiſed to the Uſe of himſelf and *B.* no Uſe ariſes till the Marriage takes Effect. *R.* 2 *Rol.* 792. *l.* 50. *Vide Uſes*, (K. 7.)

If a Man, in Conſideration that *A.* will pay his Debts, *&c.* covenants to ſtand ſeiſed to the Uſe of *A.* *&c.* no Uſe ariſes till the Conſideration be executed. *R. Mo.* 194.

But a contingent Uſe ſhall ariſe by a Covenant to ſtand ſeiſed, as well as by a Feoffment. *Per* 3 *J. Cro. El.* 801.

So, if the Conſideration ceaſes, the Uſe alſo ceaſes: As if a Man, in Conſideration of his Marriage with *B.* covenants to ſtand ſeiſed to the Uſe of him and *B.* and the Marriage is ſolemnized before *B.* attains the Age of twelve Years, who after ſuch Age diſagrees; the Uſe ceaſes as to *B.* 2 *Rol.* 792. *l.* 52.

So, if after Marriage they be divorced. 2 *Rol.* 792. *l.* 52.

Pleading concerning Covenants, and in Writ of Covenant,

Vide Pleader, (C. 45, &c.—E. 25, 26.—2 V. 1, &c.—2 W. 32.)

Releaſe of Covenants.

Vide Releaſe, (E. 4.)

Vide alſo more of Title Covenant, in *Chancery*, 2 M. 16.—2 X. 1, &c.)

COVERTURE.

Vide Abatement,—(E. 6.—F. 2.—H. 42.)——*Pleader*, (2 W. 21.)

COVIN.

(A) Covin, What ſhall be.

COVIN is a ſecret Contrivance between ſeveral to defraud and prejudice another. *Co. L.* 357. *a.* 9 *Co.* 110.

So Fraud may be committed by one only. 9 *Co.* 110. *b.*

(B. 1.

(B. 1.) An Act by Covin is void.

THE Law abhors Covin; and therefore every covinous Act ſhall be void.

So a lawful and rightful Act, if it be done by Covin, ſhall be void: As, if a Wife, after the Death of her Huſband, be of Covin with *B.* to diſſeiſe the Tenant, and endow her; the Tenant ſhall avoid the Dower. *Co. L.* 357. *b.*

If Tenant for Life makes a Surrender of his Eſtate, to defraud his Creditors, it ſhall be void. *Vide Hale in* 1 *Vent.* 257.

(B. 2.) So, a fraudulent Gift, &c.

By the *St.* 50 *Ed.* 3. 6. Becauſe Divers give their Chattles by Colluſion, and then flee to Places privileged till their Creditors compound, it was enacted, that if ſuch Gift be found to be made by Colluſion, the Creditor ſhall have Execution of the Chattles, as if no Gift had been made.

And by the *St.* 3 *H.* 7. 4. Deeds of Gift of Goods and Chattles to defraud Creditors, made on Truſt, &c. ſhall be void.

So, by the *St.* 13 *El.* 5. Every Gift, Grant, Bargain, &c. of Goods and Chattles, or any Profit out of them, and every Bond, Judgment, and Execution made of Intent to defraud Creditors or others of their juſt Actions, Debts, Damages, Forfeitures, Heriots, Mortuaries, &c. ſhall be void againſt the Perſon ſo defrauded, his Heirs, Executors, or Adminiſtrators, &c.

And if any Party or Privy to ſuch fraudulent Gift, Grant, &c. put in Ure, or avow, &c. the ſame as true, and done *bonâ fide* and on good Conſideration, he ſhall forfeit the whole Value of ſuch Goods, Bond, &c. a Moiety to the Queen, a Moiety to the Party grieved.

Provided, not to avoid any Intereſt in Goods, Chattles, &c. conveyed, &c. on good Conſideration and *bonâ fide* to any Perſon, not having at the Time of ſuch Conveyance Notice of ſuch Covin.

A fraudulent Gift, or Grant of Goods and Chattles was void by the Common Law. *Dy.* 295. *a.*

And therefore, if it was made after Judgment to defraud the Execution, it was not a Treſpaſs in the Officer, or Creditor, who took them in Execution. *Dy.* 295. *a.*

Yet a fraudulent Deed was not void by the Common Law againſt him, who had a younger Title. *R.* 3 *Co.* 83. *a.*

But now, without Queſtion, every Gift, Grant, &c. being fraudulent ſhall be void, as to Creditors, &c. whether they claim by a younger, or by an elder Title.

As, if a Man, being in Debt, conveys his Goods to another, and takes the Profits. *Dy.* 295.

If a Man before his Death bargains and ſells all his Horſes to another, without a Conſideration, to defraud the Lord of his Heriot. *Dy.* 351. *b.*

If a Man, indicted for Recuſancy, conveys his Leaſes and Goods to others, upon feigned Conſiderations, to defeat the King of his Forfeiture, and then flies over Sea. *R.* 3 *Co.* 82. *a.*

And the Word, *Forfeiture*, in *St.* 13 *El.* 5. ſhall be extended to every Thing which may be forfeited to the King, or to a Subject. *R.* 3 *Co.* 82. *b.*

If *A.* makes a Feoffment to avoid a *Formedon*, &c. againſt him, and then pleads Non-tenure. *R. Cro. El.* 233.

And a Deed has the Enſigns and Marks of Fraud, if it be comprized in general Terms: As, if he grants all his Goods and Chattles generally without Exception. *R.* 3 *Co.* 81. *a.*

If it be made in a ſecret and clandeſtine Manner. *R.* 3 *Co.* 81. *a.* 6 *Co.* 72. *a.*

If it be pending an Action, Indictment, &c. 3 *Co.* 81. *a.*

If it be accompanied with unuſual Clauſes: As, if the Deed expreſſes, that it was made honeſtly and *bonâ fide*, &c. *Ibid.*

Or, has the Colour of Payment of Debts; when none were paid, and the Poſſeſſion continues with the Bargainor. 6 *Co.* 72. *a.*

So,

So, if it be upon an expreſs Truſt. 3 *Co.* 81. *b.*

Or, if a Truſt be implied: As, if after the Gift, Bargain, *&c.* the Vendor continues in Poſſeſſion, and takes the Profits, *&c.* 3 *Co.* 81. *a.*

If the Grant be without any Conſideration. 3 *Co.* 81. *b.*

If the Grant be for Affection, or in Conſideration of Blood, or Nature. *Ibid.*

Or, to a Son, Couſin, or other Relation. *Ibid.*

If a Bargain, *&c.* of Goods be attended with Marks of Fraud, it ſhall be void, tho' it was made upon good and valuable Conſideration: As, if *A.* conveys all his Goods and Chattles to a real Creditor for Satisfaction of his Debt, and afterwards continues in Poſſeſſion, *&c.* *R.* 3 *Co.* 80. *b.*

So, if *A.* indebted to ſeveral Perſons, conveys all his Goods to one in Satisfaction of his Debt, upon Agreement, that he will deal favourably with him; for tho' it be a good Conſideration, it is not *bonâ fide.* *R.* 3 *Co.* 81. *a.*

If a Man be Party or Privy to a fraudulent Grant, *&c.* an Information lies againſt him upon the *St.* 13 *El.* 5. 3 *Co.* 80. *b.*

Or an Action of Debt for ſo much as is the Value of the Goods, by *Qui tam, &c.* *Dy.* 351. *b.*

And, if to defraud of an Heriot, *&c.* a fraudulent Deed be made of twenty Horſes; an Action lies for ſo much as was the Value of all the Horſes contained in the Grant. *Per* 2 *J. Manw. cont. Dy.* 351. *b.*

If a fraudulent Gift, Grant, *&c.* be made, it ſhall be abſolutely void as to Creditors.

But it is not void as to the Party, his Executor, or Adminiſtrator: And therefore, the Adminiſtrator, to covenant for Delivery of Goods ſold by Fraud to *B.* and covenanted to be delivered at the Death of the Covenantor, cannot plead the *St.* 13 *El.* 5. and that the Sale was to defraud Creditors. *R. Yel.* 196, 7. 2 *Cro.* 271.

But a Gift, Bargain, *&c.* ſhall not be fraudulent, if it be made *bonâ fide* and upon valuable Conſideration. *Vide Poſt,* (B. 4.)

(B. 3. And a fraudulent Feoffment, *&c.*

So by the *St.* 50 *Ed.* 3. (*quod Vide Ante,* (B. 2.) A Feoffment found to be by Colluſion to avoid Execution, ſhall be void.

And by the *St.* 13 *El.* 5. Every Feoffment, Grant, Conveyance, *&c.* of Lands or Tenements, or any Profit or Charge out of them, as of Rent, Common, *&c.* made to defraud Creditors, or others, of their juſt Actions, Suits, Debts, Damages, Penalties, Forfeitures, Heriots, Mortuaries, Reliefs, ſhall be void as to all Perſons who might ſo be defrauded, their Heirs, Succeſſors, Executors, Adminiſtrators, or Aſſigns.

So, by the *St.* 27 *El.* 4. Every Conveyance, Grant, Charge, Eſtate, Incumbrance, or Limitation of Uſe, of, or out of Lands or Tenements, made to defraud any who hath or ſhall purchaſe in Fee, for Lives, or Years, the ſame Lands, or any Part of them, or any Rent, *&c.* out of them, ſhall as to ſuch Purchaſer for Money or other good Conſideration, and all claiming, by, from, or under him, be void.

And every Conveyance, *&c.* with any Clauſe of Revocation, *&c.* ſhall be void as to any, who ſhall after purchaſe for Money or other good Conſideration (the firſt Conveyance not revoked) and all claiming by, from, or under them.

And any, Party or Privy to ſuch fraudulent Conveyance, who puts the ſame in Ure, as true and made *bona fide* or on good Conſideration, to the Prejudice of ſuch Purchaſer, ſhall forfeit one Year's Value of ſuch Lands; a Moiety to the Queen, a Moiety to the Party grieved,

Provided, not to extend to any Conveyance, Charge, *&c.* made on good Conſideration, and *bonâ fide.*

And therefore, every Feoffment, *&c.* made to defraud Creditors, *&c.* ſhall be void. *Vide Fraudulent Gift, &c. Ante,* (B. 2.)

So every Conveyance, *&c.* to defraud a Purchaſer, is void as to him, *&c.*— *Who ſhall be a Purchaſer, Vide in Chancery,* (4 I. 2.)

So, if Tenant for Life commits a Forfeiture, to the Intent that the Reverſioner ſhall enter; a Purchaſer ſhall avoid it, as well as a Conveyance. *Per Hale*, 1 *Vent*. 257.

Every voluntary Conveyance *primâ facie* ſhall be fraudulent as to a Purchaſer. *Adm*. 1 *Sid*. 133. 1 *Vent*. 194. *R. Ca. Ch*. 100, 217. *Per Hale*, 2 *Lev*. 147.

Tho' it be for Advancement of his Blood, for natural Affection, *&c*.

Tho' it be in Conſideration of a Marriage had, where there was no precedent Agreement for it. *Ca. Ch*. 99. *Vide infra*. *Vide Poſt*, (B. 4.)

So a ſecret Leaſe, *&c*. ſhall be fraudulent. 6 *Co*. 72.

So a Conveyance upon Colour of a good Conſideration, is fraudulent, where it is only colourable: As, if a Man aſſigns a Leaſe to an Infant for Payment of Debts, which are not paid. *R*. 6 *Co*. 72.

If he conveys to his Daughter, *&c*. for her Proviſion in Marriage, and ſhe does not marry. *R*. 1 *Sid*. 133.

Or, conveys to Truſtees to the Uſe of himſelf for Life, with Power to make a Mortgage, and then in Truſt to ſell for Payment of his Debts. *R*. 2 *Ver*. 510.

If Tenant in Tail conveys to Truſtees by Fine upon Truſt to pay Debts with Power to make Leaſes with Rent or without Rent, for any Time, and afterwards continues in Poſſeſſion; for the Power of Leaſing, and the Continuance in Poſſeſſion, are Marks of Fraud. *R*. 2 *Lev*. 147.

So, if there was an Agreement before Marriage to make a Settlement, and he after Marriage makes a Settlement for other Purpoſes. *R*. 2 *Lev*. 147.

If the Agreement wasonly for a Jointure to the Wife, and the Settlement goes to the Iſſue of the Marriage, it will be fraudulent for ſo much. 1 *Ver*. 285, 6.

If the Agreement was upon the Marriage of *B*. his Son, and after a Limitation to *B*. for Life, he limits in Remainder to another Son; the Remainder will be fraudulent as to a Purchaſer. *R*. *Lane* 22.

[But if *A*. ſeized in Fee has a Mother who has Annuity iſſuing out of the *whole* Lands, and two Brothers *B*. and *C*. and the Mother previous to *A*.'s Marriage conſents to part with her Security on the whole Lands, and to take it on Part of the Lands; and *A*. and Mother join in Fine, and then in Conſideration of ſaid Grant and Releaſe, and of Marriage and Portion, conveys to Truſtees to pay Annuity out of Part, then the whole Lands to the Uſe of *A*. for Life, Remainder to preſerve, *&c*. Remainder to firſt and other Sons, Remainder to *B*. and *C*. ſucceſſively in Tail-male, Remainder to the Daughters of *A*. Remainder to *A*. in Fee; the Mother's Conſent to change her Security is a good Conſideration for *A*. to make this Settlement on *B*. and *C*. *Roe* v. *Mitton*, *M*. 8 *G*. 3. 2 *Wilſ*. 356.]

So a Conveyance with a Clauſe or Revocation will be fraudulent as to a Purchaſer, tho' the Power of Revocation be future, *viz*. after the Death of *B*. *&c*. and the Statute ſpeaks only of a preſent Power. *R*. 3 *Co*. 82. *b*. *Mo*. 618. *Bridg*. 23.

So, if the Power of Revocation is to be exerciſed with the Aſſent of another. 3 *Co*. 82. *b*. *Bridg*. 23.

Or, to be executed by another.

So, if the Power be reſerved by the Recoveror, and not by him to whoſe Uſe the Recovery was. *R*. *Mo*. 616.

So a Conveyance, with a Power of Revocation, will be fraudulent tho' made in Conſideration of Marriage, *&c*. *Lane* 22.

So it will be void as to the Conuſee of a Statute, or any who has a Charge out of, or upon the Land, as well as to a Purchaſer, or Grantee, *&c*. of the Land itſelf. *R*. *Bridg*. 22.

So, if a Conveyance be with a Clauſe of Revocation, and afterwards the Power be extinguiſhed by Fine, Feoffment, *&c*. to the Intent to defraud a Purchaſer; the Fine, Feoffment, *&c*. ſhall be void as to him, for a Conveyance with a Power of Revocation is in the ſame Degree as a Conveyance by Fraud. *R*. 3 *Co*. 83. *a*. *Mo*. 618.

If a Father makes a fraudulent Leaſe, *&c*. and the Son ſells the Eſtate, the Purchaſer ſhall avoid it. *R*. 6 *Co*. 72. *b*.

Tho' the Son did not know of the fraudulent Conveyance. 6 *Co*. 72. *b*.

A fraudulent Conveyance ſhall be void as to a Purchaſer tho' he had Notice of it before his Purchaſe. *R.* 5 *Co.* 60. *b.* *D.* 2 *Lev.* 105.

(B. 4.) What ſhall not be fraudulent.

But a Conveyance ſhall not be fraudulent, if it be made upon good Conſideration, tho' it was concealed, or ſecretly made. *R.* 2 *Cro.* 158, 455. *R.* 1 *Vent.* 194.

So, if it was concealed in the Time of the Civil War, for Fear of a Sequeſtration. *R.* 1 *Sid.* 134.

So a Leaſe made by him, who has a Power of Revocation, ſhall not be fraudulent, tho' there be no Conſideration, except the Rent reſerved. *R.* 2 *Cro.* 181.

So a Conveyance upon a good Conſideration is not fraudulent, tho' it was not for Money: As, if it be upon Conſideration of a Marriage to be had.

So, if it be made after Marriage, in Purſuance of Articles, *&c.* before Marriage. *R.* 2 *Cro.* 158, 455. *R.* 1 *Vent.* 194. *Vide Ante*, (B. 3.)

Or, in Purſuance of an Agreement by *Parol* before Marriage. 2 *Cro.* 158, 455. 1 *Vent.* 194.

Tho' it be provided, that it ſhall be void upon Settlement of another Jointure on his Wife, and ſo in ſome Sort is determinable at his Pleaſure. *R.* 2 *Cro.* 455.

Or, if it be with a Clauſe of Revocation, with the Conſent of four Truſtees for the Wife; for the Settlement, being upon good Conſideration, and not determinable at his Pleaſure, or of any in Truſt for him, is good. *R.* 2 *Jon.* 94.

So, if Huſband and Wife join in the Alienation of Land, limited to them and the Heirs of their Bodies by Marriage Settlement, and the ſame Day the Huſband ſettles Lands of greater Value to the ſame Uſes; the ſecond Settlement is not fraudulent as to a Purchaſer of the ſame Land, tho' it does not appear to be purſuant to the Marriage-Agreement; for it ſhall be intended the Wife would not otherwiſe have joined in the Alienation of her Jointure. *R.* 2 *Lev.* 71.

So, if the Huſband, upon ſuch Alienation, undertakes to give to the Wife, at his Death, 400 *l.* and afterwards gives an Obligation to ſuch Intent. *R.* 2 *Lev.* 148.

So a Settlement upon Marriage, with a Proviſo to charge Land with 2000 *l.* is not void as to a Purchaſer; tho' it was voluntary as to ſuch Proviſo. *R.* 1 *Lev.* 151.

So, if a Conveyance, in its Commencement voluntary or covinous, becomes afterwards ſettled upon a good Conſideration, it ſhall not be avoided, as fraudulent, by a ſubſequent Purchaſer: As, if a Man conveys to his Daughter, as a Proviſion for her when ſhe ſhall marry, and upon Proſpect of this Settlement, ſhe marries, and then the Father ſells for a valuable Conſideration; the Purchaſer ſhall not avoid the Settlement upon the Daughter. *R.* 1 *Sid.* 133, 4.

So, if a Man makes a covinous Settlement upon his Son, who ſells for a valuable Conſideration, and afterwards the Father ſells to another for Money; his Purchaſer ſhall not avoid the Settlement by the Son. *R.* 1 *Sid.* 134.

So, if a voluntary Leaſe be aſſigned for a valuable Conſideration, the Purchaſer of the Inheritance after the Aſſignment, ſhall not avoid it. *R.* 3 *Lev.* 388. *Skin.* 423.

So a voluntary Settlement by a Father, ſhall not be avoided by a Purchaſer from the Son. 1 *Ver.* 46.

So, if the Conſideration extends only to an Eſtate-Tail; a Remainder afterwards, tho' without good Conſideration, is not fraudulent; for a Remainder after an Eſtate which may be perpetual, ſhall not be ſuppoſed made for defrauding Creditors. *R.* 2 *Lev.* 105.

So a Settlement after Marriage, in Conſideration of the Wife's joining in the Alienation of her Jointure, ſhall not be fraudulent as to the Iſſue, tho' the Huſband might have barred them without his Wife. *R.* 2 *Lev.* 71.

So a voluntary Conveyance ſhall not be taken to be fraudulent, as to a Purchaſer upon a Conſideration of Nature, or Blood, &c. for the Words in the *St.* 27 *El. for Money or other good Conſideration*, are *tantamount* to the Words, *or other valuable Conſideration*. *R.* 3 *Co.* 83.

And therefore, if a Man, for Advancement of his Heirs Male to be begotten upon the Body of his Wife, covenants to levy a Fine to the Uſe of himſelf for Life, and afterwards to his eldeſt Iſſue Male upon the Body, &c. and afterwards, to defeat that Covenant, makes a fraudulent Leaſe, and then levies the Fine; tho' the eldeſt Iſſue be a Purchaſer *bonâ fide*, he ſhall not avoid the Leaſe. *R.* 3 *Co.* 83. *b.* *Cro. El.* 444.

Or, covenants to ſtand ſeized to the Uſe of his Son, Nephew, &c. *R. Mo.* 602.

So, if a Man makes a Settlement after Marriage, upon his Wife for her Jointure, without a precedent Agreement, the Wife ſhall not avoid a fraudulent Conveyance made before. *R. Cro. El.* 445.

So, if a Leaſe be made *bonâ fide*, but without a Fine given, or Rent reſerved; the Leſſee ſhall not avoid a fraudulent Conveyance made before. *R.* 3 *Co.* 83. *a.*

So, if a Man, by Impoſition of the Vendee ſells to him at an Under-value; he ſhall not avoid a voluntary Settlement made by the Vendor before by Advice of Friends: For the Statute does not extend to a Purchaſer by indirect Means. 3 *Co.* 83. *b.* *Cro. El.* 445.

So, if a Purchaſer upon Conſideration of Nature, or Blood, afterwards ſells upon a valuable Conſideration; the Vendee ſhall not avoid a voluntary Settlement made prior to the Settlement on his Vendor. *R. Mo.* 602. *R. Ray* 25.

Vide Fraud in Title Chancery, (3 F. 1, 2.—3 M. 1, &c.—3 N. 1.—4 D. 3.—4 H. 4.—4 L. 1.—4 O. 2.)

COUNCIL.

King's Council.

Vide Roy, (E. 1, &c.)

President of the Council.

Vide Roy, (E. 2.)

Privy Council.

Vide Roy, (E. 2, &c.)—*Parliament*, (L. 30.)

Common Council.

Vide Franchiſes, (F. 25.)—*London*, (F.)

COUNT.

Vide Abatement, (G. 1, &c.)—*Accompt*, (E. 2.)—*Action upon the Caſe*, (C. 2.)——*Action upon the Caſe upon Aſſumpſit*, (H. 2, &c.)——*Action upon the Caſe for a Conſpiracy*, (C. 2, &c.)——*Action upon the Caſe for a Deceipt*, (F. 2, 3.)——*Action upon the Caſe for Defamation*, (G. 1, &c.)——*Action upon the Caſe for a Diſturbance*, (B. 1.)——*Action upon the Caſe for Negligence*, (B. 1.—C. 2.)——*Action upon the Caſe for a Nuſance*, (E. 1.)——*Action upon the Caſe upon*

upon Trover, (G. 1, &c.)——*Amendment*, (L. 1, 2.)——*Annuity* (E.)——*Appeal*, (G. 6.)—*Attorney*, (B. 21.)——*Audita Querela* E. 6.)——*Charters*, (B. 2.)——*Courts*, (P. 9.)—*Droit*, (C. 4.) ——*Pleader*, (C. 1, &c.)——F. 6, 7, 12.—M. 1.—S. 24, 43.—Y. 3.—2 L. 1.—2 S. 16.—2 V. 2.—2 W. 7, &c.)—2 X. 2.—2 Y. 2.—2 Z. 1.—3 A. 5.—3 E. 2.—3 F. 2.—3 I. 3.—3 K. 10.—3 M. 3.—3 N. 3.—3 O. 2.—*and other Places in the ſame Title.*) —*Prohibition*, (I.)——*Quare Impedit*, (B. 2.)——*Voucher*, (E.)

COUNTERFEITING.

Vide Forgery.

Counterfeiting the Great or Privy Seal.

Vide Juſtices, (K. 6.)

Counterfeiting Money.

Vide Juſtices, (K. 7.)

COUNTERMAND.

Countermand of a Will.

Vide Deviſe, (F. 1, 2.)

Countermand of an Authority.

Vide Attorney, (B. 9, &c.—C. 8, &c.)

COUNTERPLEA.

Vide Voucher, (B. 1, 2.)

COUNTY.

(A) County.

THE Kingdom was divided into Counties before the Time of King *Alfred*. *Co. L.* 168. *a.* 2 *Inſt.* 71.

But others aver, that the Diviſion of the Kingdom into Counties, and of the County into Hundreds, and of the Hundred into Tithings, was originally made by King *Alfred*.

The County, by the *Saxons*, was called the Shire, from *Schiram, partiri. Co. L.* 168. *a.*

The King by his Patent may make a County, or erect any Part of a County into a County by itſelf. *Poph.* 17.

So in the Erection of a Town into a County he may reſerve a Privilege, *&c.* which the County out of which it is taken, had there before: As, to hold Courts, Aſſizes, Gaol-delivery there. *R. Poph.* 17. 1 *And.* 292.

The

The Courts of *Weſtminſter* judicially take Notice of every County. 1 *Sal.* 266.

As to County Palatine, *Vide Franchiſes*, (D, 1, &c.)——*Abatement*, (D. 2.)
As to *Wales*, *Vide Wales*, (A. 3.)

(B) Sheriff.

(B. 1.) How conſtituted.

THE Earl had antiently the Government of the County. *Co. L.* 168. *a. Dav.* 60. *a.*

And now the Sheriff is the principal Officer there under the King. *Co. L.* 168. *a.*

Who was an Officer before the Conqueſt. 3 *Co. Pref.* 2. *b.*

Antiently the Sheriff was choſen, as the Coroner is, by the County. 2 *Inſt.* 174, 558. *By Art. ſup. Chart.* 28 *Ed.* 1. 8.

By the *St. of Linc.* 9 *Ed.* 2. Sheriffs ſhall be aſſigned by the Chancellor, Treaſurer, Barons of the Exchequer, and Juſtices; or, in Abſence of the Chancellor, by the Treaſurer, Barons and Juſtices.

By the *St.* 14 *Ed.* 3. 7. By the Chancellor, Treaſurer, Chief Baron, and two Chief Juſtices yearly, the Morrow after *All Souls* at the *Exchequer* *. **Vide* St. 12. R. 2. 2.)

And the King ought, regularly, to name one of the three Perſons preſented to him according to the Statute. *Certified by the two Chief Juſtices, with the Agreement of the other Juſtices*, 34 *H.* 6. 2 *Inſt.* 559.

But it is not of Neceſſity, that the King appoint one of the three preſented to him. *Semb.* 2 *Inſt.* 559.

So the Day for nominating Sheriffs may be adjourned by the King to a Time after the Morrow of *All Souls*. *Cro. Car.* 13. *R. Cro. Car.* 595.

So the King may appoint without ſuch Aſſembly. *R. Dy.* 215. *b.*

The King by Letters Patent conſtitutes him, whom he will have, to be Sheriff. *Cromp. Off. of Sheriff* 183.

And other Letters Patent are directed to all Archbiſhops, Biſhops, Dukes, Earls, Barons, Knights, and others within the County, to be aiding and attending upon the Sheriff. *Ibid.*

But by the *St.* 3 *Geo.* 1. 15. If a Sheriff die before his Year ends, or be ſuperſeded; his Under-ſheriff ſhall continue in his Office, and execute the ſame in all Things in the Name of the Sheriff deceaſed, and ſhall be anſwerable for the ſame in all Reſpects, *&c.*

(B. 2.) For what Time.

Antiently a Sheriff might be conſtituted for Life, for Years, or in Fee.

But by the *St.* 14 *Ed.* 3. 7. 28 *Ed.* 3. 7. 42 *Ed.* 3. 9. No Sheriff ſhall continue in his Office above one Year.

And by the *St.* 23 *H.* 6. 8. (which confirms the former Statutes) If any Sheriff, Under-ſheriff, *&c.* occupy his Office contrary to the Effect of the ſaid Statutes, (except Under-ſheriffs and all other Officers in *London*, and Sheriffs in Counties that have an Eſtate of Inheritance or Freehold in their Office) he ſhall forfeit 200*l.* yearly, as long as he ſo occupies: And a Pardon of ſuch Offence or Forfeiture ſhall be void.

And all Patents of the ſaid Office for Years, for Life, in Fee, or Tail, ſhall be void.

And therefore the Commiſſion to the Sheriff ſays, *Commiſſimus A. Com' noſtr', &c. cuſtodiend' quamdiu nobis placuerit. Crompt. Off. of Sheriff.*

Yet, by the *St.* 12 *Ed.* 4. 1. & 17 *Ed.* 4. 6. A Sheriff may execute and return Writs, and do any Thing belonging to his Office, during *Michaelmas* and *Hilary* Terms, unleſs he be duly diſcharged, without incurring the Penalty of the ſaid *St.* 23 *H.* 6. 8.

(B. 3.) How discharged.

After a new Sheriff is appointed, a Writ shall be directed to the old Sheriff, commanding him *quod Comitat' una cum Rotulis, Brevibus, Memorandis, & omnibus aliis ad Officium Vic. Com. præd. spectan. per Indentur' int' te & præfat' W. conficiend' liberet. Cromp. Off. of Sheriff* 183. *b.* *Dy.* 355. *a.*

And after such Writ delivered to the old Sheriff, his Authority ceases.

So, if it be delivered to the Under-sheriff in the County-Court. *Per* 2 *J. Dy.* 355. *a.* *Dub. Cromp. Off. of Sheriff* 183. *b.*

And if the Under-sheriff, after the Delivery of the Discharge to his Sheriff, does Execution, tho' he did not know it, it shall be void. *Per* 2 *J. Dy.* 355. *a. in Marg.*

After the Writ to the Sheriff for his Discharge, he ought to deliver to the new Sheriff, by Indenture with a Schedule, all Writs and Rolls in his Custody, and all Prisoners by their Names, and the Causes for which they were committed to him. *Cromp. Off. of Sheriff* 183. *b.*

[Assignment of Prisoners by Under-sheriff to the succeeding High-sheriff is good without Indenture. *Barnes* 367.]

And if he does not mention any Execution in the Schedule, or give Notice of it to the new Sheriff by *Parol*, when he delivers a Prisoner to him for another Cause, and the Prisoner afterwards escapes; an Action lies for the Escape against the old Sheriff. *R. Mo.* 688, 9. 2 *Leo.* 54.

So a Writ of *Supersedeas*, tho' it be not returnable. *R.* 1 *Mod.* 222. 2 *Mod.* 217.

And an Action upon the Case lies against him, if he does not deliver it. *R.* 1 *Mod.* 222.

But an Execution by the Sheriff before Notice of his Discharge, tho' a new Sheriff be appointed, shall be lawful. *R. Dy.* 355. *a. in Marg.* *R. Cro. El.* 440. *R. Mo.* 364, 186.

So, the Holding of a County-Court. *Cro. El.* 12.

So, if a Barony, or other Dignity, descends to the Sheriff, he is not discharged; but he continues Sheriff during the Will of the King. *R. Cro. El.* 12.

Tho' the Dignity descends in the Time of Parliament, so that he ought to attend Parliament as a Peer. *Cro. El.* 12.

As to the Oath, Duty, and Office of a Sheriff, *Vide Viscount.*

(C) County-Court.

(C. 1.) The Stile, &c. The Sheriff's Court.

THE Sheriff has two Courts within his County: The Tourn, formerly the *Folkmote*, for Criminal Causes, (*de quo Vide Leet*, (A.) and the *Sciremote*, or County-Court. 2 *Inst.* 69. *Dav.* 60. *a.*

The Stile of the County-Court is, *Essex ss. Curia prima Comit' A. B. Vic. Com. præd. tent. apud D. &c.* 4 *Inst.* 266.

And therefore, the County-Court is the Court of the Sheriff. *R.* 4 *Co.* 33.

A Writ of *Justicies, &c.* is directed to the Sheriff; for it is his Court. 6 *Co.* 11. *b.*

And therefore, the Sheriff alone may name the County-Clerk; for it is incident to his Office. *R.* 4 *Co.* 33.

And if the King by Patent constitutes a County-Clerk before the Sheriff himself has his Patent; yet the Grant of the King shall be void. *R.* 4 *Co.* 33. *Mitton.*

(C. 2.(

(C. 2. Who ſhall be Judge there.

The County-Court is a Court-Baron and not a Court of Record, in which the Suitors are Judges, and not the Sheriff. *R.* 6 *Co.* 11. *b. Per Choke and Litt. Cateſby cont.* 6 *Ed.* 4. 3. *b.*

Tho' the Plea be there by *Juſticies, &c.* 6 *Co.* 11. *b.*

Or, in Admeaſurement of Dower, *Replevin, &c. Per Litt.* 7 *Ed.* 4. 23. *a.*

In theſe Caſes, the Sheriff or his Bailiffs are only Miniſters. 6 *Ed.* 4. 3. *b.*

And therefore, upon a Judgment in the County-Court, a Writ of falſe Judgment lies, and not Error. 6 *Co.* 11. *b.*

Tho' the Judgment be given there upon a *Juſticies.* *R.* 2 *Leo.* 34, 210. 21 *H.* 6. 34.

But in *Re-diſſeiſin* the Sheriff is Judge, and the Proceedings are of Record, upon which Error lies. 6 *Co.* 11. *b. Vide Aſſiſe,* (F. 1, &c.)

So, if a Plea be there by *Juſticies,* the Sheriff ought to be there in Perſon, and cannot make a Deputy: For if he does, the Proceedings will be *coram non Judice,* and void. *R.* 2 *Leo.* 34, 210.

Yet, if the Court is alledged to be held before the Sheriff, it ſeems to be well. 21 *H.* 6. 34.

So in the Tourn the Sheriff is Judge. 6 *Co.* 12. *a.*

(C. 3.) When it ſhall be held.

By *St. M. Ch.* 9 *H.* 3. 35. *Nullus Comitat' teneatur niſi de menſe in menſem, & ubi major Terminus eſſe ſolebat, major fiet*; which was an Affirmance of the Common Law. 2 *Inſt.* 70.

And by the *St.* 2 & 3 *Ed.* 6. 25. No County-Court ſhall be deferred longer than from Month to Month, and ſo be kept every Month.

And the Computation ſhall be by Lunar Months. 2 *Inſt.* 71. *Vide Ann,* (B.)

(C. 4.) At what Place.)

A County-Court may be held at any Place within the County, if it be not appointed by Statute in a Place certain.

(C. 5.) The Juriſdiction of the County-Court.

(C. 5.) By *Juſticies.*

The County-Court may hold Plea by *Juſticies* of any Value above 40*s.* for it is in the Nature of a Commiſſion. 2 *Inſt.* 312. 4 *Inſt.* 266. Tho' the Value be 1000*l.* 21 *H.* 6. 34.

As, in Debt, Detinue, Treſpaſs, and other Perſonal Actions. 4 *Inſt.* 266. *F. N. B.* 85. *F.*

Tho' the Treſpaſs be *vi & armis.* 2 *Inſt.* 312.

In Annuity. 4 *Inſt.* 266.

Dower, *unde nihil habet,* and *Quarentinâ habend'.*

So in divers Real Actions the Sheriff may hold Plea by *Juſticies:* As, in Admeaſurement of Dower, or Paſture. 4 *Inſt.* 266. 2 *Inſt.* 312.

In a Writ of *Meſne,* of Cuſtoms and Services. 4 *Inſt.* 266.

In a *Quod Permittat,* Nuſance, *&c.* 4 *Inſt.* 266. *Vide Quod Permittat,* (D. 1.)

In *rationab. Diviſis,* and *Curiâ Claudendâ.* 4 *Inſt.* 266.

In *ſecta ad Molendinum. Ibid.*

In Right Patent, or Right of Ward.

In *Nativo habendo.* 2 *Inſt.* 312.

In *Plegiis acquietandis.*

So in Debt for Tithes. *Dub.* 1 *Lev.* 253.

(C. 6.) By Appeal. So the County-Court ſhall hold Plea in an Appeal of Robbery, Rape, or other Felony. *Vide Appeal*, (F.)

(C. 7.) By *Replevin*. So the County-Court may hold Plea by Writ of *Replevin* of any Value; for the Writ is in Nature of a Commiſſion. 2 *Inſt.* 312. *Vide Pleader*, (3 K. 1, &c.)

So, in an *Homine Replegiando*.

So a Writ of Re-caption may be ſued in the County-Court before the Sheriff and Coroners.

Vide Poſt, (C. 8.)

(C. 8.) By Plaint. So the County-Court holds Plea by Plaint in Debt, Detinue, or other perſonal Action (not being *vi & armis)* under the Value of 40*s*. 2 *Inſt.* 312. 4 *Inſt.* 266.

So, if the Debt was originally above 40*s*. if the Plaintiff by his Declaration acknowledges the Receipt of ſo much as reduces the Debt under 40*s*.

So it may hold Plea by Plaint of Treſpaſs, if it be not *vi et armis* : As, of a Battery. 2 *Inſt.* 312.

So by the *St. of Marlb.* 52 *H.* 3. 21. The County-Court may hold Plea by Plaint in *Replevin*, tho' the Cattle are of the Value of 20*l*. 2 *Inſt.* 139, 312. *Vide Pleader*, (3 K. 2.)

But the County-Court cannot hold Plea by Plaint, in Debt, Detinue, or other perſonal Action, of the Value of 40*s*. or above: For *Placita de debitis aut Catallis quæ ſummam* 40*s*. *attingunt aut excedunt ſine brevi Domini Regis placitari non debent*. 2 *Inſt.* 312. 4 *Inſt.* 266. *Vide Copyhold*, (R. 14.)—*Courts*, (B. 3.)

And it ought to appear in the Declaration to be under 40*s*. for if he counts to more, tho' the Verdict finds leſs, he ſhall not have Judgment. 2 *Inſt.* 312. or, if he has Judgment, it ſhall be reverſed. *R.* 2 *Mod.* 206.

Neither can he divide a Debt, and by ſeveral Plaints demand under 40*s*. in each. 2 *Inſt.* 312.

Nor can he join ſeveral Debts in the ſame Plaint, if they all amount to 40*s*. tho' each ſeverally be under that Value. *R.* 1 *Vent.* 65, 73.

Nor can he acknowledge Satisfaction of Part, falſly, to reduce the Debt under 40*s*. *R. Pal.* 564.

So the County-Court cannot hold Plea *vi & armis*; for then a Fine is due to the King, which cannot be aſſeſſed in a Court not of Record; and therefore, it ſhall not hold Plea by Plaint in Treſpaſs *vi & armis*. 2 *Inſt.* 311. 4 *Inſt.* 266.

Nor, of Wounds and Mayhem. 2 *Inſt.* 312.

Nor, for Deceit or Maintenance.

Or, forging of a falſe Deed.

So it ſhall not hold Plea in Account againſt any, as Receiver, tho' it be under 40*s*. for the Sheriff cannot aſſign Auditors, who are Judges of Record. 2 *Inſt.* 380.

Nor, for Debt upon a Record or Specialty.

So it cannot hold Plea, by Plaint, concerning Freehold.

Nor, in Dower. 2 *Lev.* 123.

And therefore, if a Man in a Plaint in *Replevin*, juſtifies, avows, or makes Conuſance as in the Freehold of *B.* the Juriſdiction of the County-Court is ouſted. 3 *Lev.* 196, 204.

So it cannot hold Plea of Charters for Land of Freehold or Inheritance. 2 *Inſt.* 311.

Or, in an *Homine replegiando*, where any one is committed for the Death of a Man, by Command of the King, or of the Juſtices, or for the Foreſt. 2 *Inſt.* 186, 7.

If the County-Court holds Plea where it has no Juriſdiction, the Proceeding is *coram non Judice*, and void, and Treſpaſs lies againſt any, who act under the Proceſs of the Court. 3 *Lev.* 203.

And

And if Freehold, or other Plea, which ouſts the Juriſdiction, be pleaded, all the ſubſequent Proceedings are void. *R.* 3 *Lev.* 204.

And a *Superſedeas* may be granted to ſuch Proceſs. *F. N. B.* 239. *D. H.*

Every Reſiant within the County ought to do Suit at the County-Court.

And for Default of Appearance when ſummoned, he ſhall be amerced.

So he may have Land by the Tenure of doing Suit at the County-Court.

Vide Diſmes, (M. 5.)

(C. 9.) Proceſs.

Proceſs in the County-Court ſhall be by Summons, Attachment and Diſtreſs infinite in all Perſonal Actions by Plaint or *Juſticies*, except in Treſpaſs. (C. 9.) Meſne.

In Treſpaſs, it ſhall be by Attachment and Diſtreſs infinite.

And the Sheriff may by his Precept award Summons of the Defendant by his Goods, returnable in two or three Days at his Diſcretion. 4 *Inſt.* 266.

And the Summons may iſſue two or three Days before the Court. *Ibid.*

And ſhall be directed to a Bailiff. *Ibid.*

And the Sheriff ſhall make the Precept in his own Name, tho' the Suitors are Judges. *R.* 3 *Lev.* 203.

And it ſhall be to the Sheriff's Bailiffs; not to ſpecial Bailiffs. *Semb. Lut.* 1413.

If the Defendant does not appear upon Summons, an Attachment ſhall go againſt him, (and in Treſpaſs it is the firſt Proceſs) directed to a Bailiff *quod pon' per vad' & ſalv' pleg', &c. Vide Proceſs*, (D. 6.)

Upon which the Bailiff attaches him by Pledges, or his Goods.

Or, it is ſufficient, that he warns him to appear, if he be returned warned.

The Bailiff ſhall keep the Goods attached till the next Court, and if the Defendant then makes Default, they are forfeited. *Vide Proceſs*, (D. 6, 7.)

If the Defendant does not appear upon the Attachment, a *Diſtringas* ſhall go, by which the Bailiff ſhall diſtrain the Goods of the Defendant, and keep them till he appears; and if he makes Default, they are forfeited. *Vide Proceſs*, (D. 6, 7.)

And ſo *Diſtringas in infinitum* till the Defendant appears.

But a *Capias* does not lie in the County-Court.

After Judgment, Proceſs for Damages and Coſts ſhall be made by *Levari facias*. (C. 10.) Judicial.

But a *Levari facias* out of the County-Court ought to be *de bonis & catallis* only, and not *de terris & catallis*. *Semb. Lut.* 1413.

And the Goods taken ſhall not be ſold without a Cuſtom alledged for it. *Semb. Lut.* 1413.

Vide Copyhold, (R. 18.)

(C. 11.) Trial.

If a Suit be in the County-Court by *Juſticies*, the Trial ſhall be by a Jury.

So, by Preſcription, it may be in a Suit by Plaint.

But, without a Preſcription for it, in a Suit by Plaint, the Trial ſhall be by Wager of Law, or Examination of Witneſſes.

[Statute 23 *G.* 2. *c.* 33. impowers County-clerk, and Suitors in County-court of *Middleſex*, to determine any Plaint under 40 *s.* in a ſummary Way, and regulates the Times of Holding, and other Methods of Proceeding.]

(C. 12.) Plaint.

Every Plaint ought to be entred in Writing *ſedente Curiâ*.

And the Plaintiff muſt be preſent in Perſon, or by Attorney.

And ſhall find Pledges. *Vide Pleader*, (3 K. 5.)

(C. 13.) Execution.

After Judgment, Execution ſhall be done, and the Damages and Coſts levied (if the Cuſtom allows it) by a *Levari facias*. *Vide Ante*, (C. 10.)

If the Cuſtom does not allow a *Levari facias*; it ſhall be only by *Diſtringas*, and Detainer of the Goods diſtrained as a Pledge till the Coſts and Damages are ſatisfied.

If the Sheriff delays Execution, a Writ *de Executione Judicii* may be directed to him out of *Chancery* to do Execution.

And thereupon, an *Alias*, and *Pluries*, and Attachment againſt the Sheriff.

Foreign County.

Vide Juſtices, (Y. 14.)—*Pleader*, (S. 9, 11.—3 M. 3.)

In what County an Action ſhall be ſued.

Vide Action, (N. 1, &c.)—*Action upon the Caſe for a Conſpiracy*, (C. 2.)—*Action upon the Caſe for a Deceipt*, (F. 2.)—*Appeal*, (E.)

County-Clerk.

Vide Ante, (C. 1.)

Coroner in a County.

Vide Officer, (G. 2, &c.)

Knights of the Shire.

Vide Parliament, (D. 5, 11.)

Poſſe Comitatus.

Vide Viſcount, (C. 2.)

Vide Admiralty, (F. 2.)—*Diſmes*, (E. 4.)—*Juſtices of Peace*, (B. 67.)—*Leet*, (O. 3.)—*London*, (H.)

COURTS.

The Court of Chancery.

Vide Chancery.

The Courts of Scotland.

Vide Scotland, (D. 10, &c.)

The Court of Parliament.

Vide Parliament.

The

The Courts of County Palatine.

Vide Franchiſes, (D. 1, &c. 9.)

The Courts of the Cinque Ports.

Vide Franchiſes, (E. 2.)

The Court of Antient Demeſne.

Vide Antient Demeſne, (G. 1, &c.)

The Court-Baron.

Vide Copyhold, (R. 1, &c.)

The County-Court.

Vide County, (C. 1, &c.)—*Diſmes*, (M. 5.)

The Cuſtomary-Court.

Vide Copyhold, (R. 2, &c.)

The Courts in a Foreſt.

Vide Chaſe, (R. 1, 2.)

The Hundred-Court.

Vide Hundred, (B.)—*Diſmes*, (M. 5.)

The Lord of a Manor's Court.

Vide Copyhold, (P. 1.)

The Courts in the Plantations.

Vide Navigation, (G. 2.)

The Court of Pye-Powders.

Vide Market, (G. 1, 2.)

The Court of Commiſſioners of Sewers.

Vide Sewers, (D.)

The Court of the Tourn, or Leet.

Vide Leet.

(A) All Judicature remains in the King's Courts.

THE King has diſtributed all his Power of Judicature to divers Courts. 4 *Inſt.* 70.

And therefore, the King himſelf cannot adminiſter Juſtice except by his Juſtices. 4 *Inſt.* 71. *R.* 12 *Co.* 64.

And

And if any one renders himſelf to the Judgment of the King, it is of no Effect, if he does not render himſelf to the King's Court. 4 *Inſt.* 71.

If the King himſelf ſits in *B. R.* Juſtice ſhall be adminiſtred by the Judges. 4 *Inſt.* 73. 12 *Co.* 64.

(B) The King's Bench.

(B. 1.) The Extent of it's Juriſdiction.

THE King's Bench is held *coram Rege.* 4 *Inſt.* 71, 73.

[If by the King's Pardon Security is directed to be given, *qual. Curia de Banco noſtro dirigeret*, it is the King's Bench. *Rex* v. *Leonard*, *P.* 6 *G. Str.* 302.]

And antiently it was attendant upon the Palace, or Court of the King. 4 *Inſt.* 71, 73. *Mad.* 539, 543.

The Juſtices of *B. R.* have ſupreme Authority. 4 *Inſt.* 73.

And therefore, have properly Juriſdiction in all Pleas of the Crown; as, High Treaſon, Felony, *&c.* 4 *Inſt.* 71.

In all Errors in Fact, or in Law, upon Judgments by any other Court of Record in the Kingdom, except the *Exchequer.* 4 *Inſt.* 71. *Vide Pleader*, (3 B. 3.)

Tho' the Felony, *&c.* is committed within the King's Palace; for the *St.* 33 *H.* 8. 12. does not take away their Juriſdiction. *R.* 2 *Jon.* 53.

So *B. R.* may hold Plea, by Original out of *Chancery*, in Treſpaſs *Vi & Armis.* 4 *Inſt.* 71.

So, in *Replevin.* 4 *Inſt.* 71. 2 *Inſt.* 23.

In *Reſcous*, Forcible Entry, *&c.* 2 *Inſt.* 23.

In Treſpaſs, *&c. Vi & Armis* under 20 *s.* or of whatever Value. *R.* 3 *Mod.* 275. *Carth.* 108.

So, in Ejectment, and all Actions *Vi & Armis.* 2 *Inſt.* 23.

So, in *Quare Impedit* by the King, tho' it be not *Vi & Armis.* 4 *Inſt.* 71.

And in every other Action brought by the King. 2 *Inſt.* 23. 2 *Rol.* 167. *l.* 5.

So *B. R.* may hold Plea by Bill, in Debt, *Detinue*, Covenant, *Aſſumpſit*, Account, and all Perſonal Actions, where the Plaintiff has Privilege as an Officer, or Clerk of the Court. 4 *Inſt.* 72.

Or, where the Defendant has Privilege as an Officer, or Clerk of the Court, or being *in Cuſtodia Mareſchalli.* 4 *Inſt.* 71. 2 *Inſt.* 23.

Whether the Defendant be in Cuſtody by Commitment, or by *Latitat*, Bill of *Middleſex*, or other Proceſs. 4 *Inſt.* 72.

Tho' it be in an Action upon a Statute, *Valore maritagii, &c.* 1 *Rol.* 536. *l.* 50. 537. *l.* 45. *Vide Action upon Statute.*

So, if Error be in *B. R.* upon a Judgment in *C. B.* in a Plea of Abatement, and the Judgment be reverſed, *B. R.* may then proceed in the original Cauſe. 4 *Inſt.* 72. 2 *Inſt.* 23.

So *B. R.* may hold Plea in an Aſſiſe of *Novel Diſſeiſin*; for it is a Plaint, and not reſtrained by *M. Ch.* 9 *H.* 3. 11. which enacts that Common Pleas *non ſequantur Curiam noſtram. Ibid.*

In a *Scire facias* to repeal the King's Patent. 4 *Inſt.* 72.

So, in *Rediſſeiſin, &c.* 2 *Inſt.* 23.

So *B. R.* has Juriſdiction to correct and reform all Errors and Miſdemeanors extrajudicial, which tend to the Breach of the Peace, or Oppreſſion of the Subject. 4 *Inſt.* 71.

And therefore, if a Corporation or others, disfranchiſe or amove an Officer, *&c.* without Cauſe, or wrongfully refuſe to execute a Power or Authority intruſted to them, *B. R.* will grant a *Mandamus.* 4 *Inſt.* 71. *Vide Franchiſes*, (F. 31, &c.)—*Mandamus*, (A.—B.)

If a Court, Temporal or Spiritual, exceeds its Juriſdiction, *B. R.* will grant a Prohibition. 4 *Inſt.* 71. *Vide Prohibition.*

If

If any be impriſoned without juſt Cauſe or Authority, it will grant an *Habeas Corpus*. 4 *Inſt.* 71. *Vide Habeas Corpus.*

So *B. R.* is ſuperior to the Juſtices in *Eire*. 4 *Inſt.* 73.

The Juſtices of *B. R.* are the Sovereign Juſtices of *Oyer and Terminer*, Gaol-delivery, and of the Peace, *&c.* within the Realm. 4 *Inſt.* 73.

They are the Sovereign Coroners within the Realm. *Ibid.*

And therefore, if *B. R.* ſits in any County, the Authority of Juſtices in *Eire*, or other Juſtices of *Oyer and Terminer*, Gaol-Delivery, *&c.* in the ſame County, ceaſes immediately. *Ibid.*

And *B. R.* may do all that the Coroner, *&c.* can do. *Ibid.*

Yet if an Indictment be removed before ſpecial Commiſſioners of *Oyer and Terminer*, they may proceed upon it, tho' *B. R.* ſits in the ſame County. 4 *Inſt.* 73.

So, if an Indictment be taken in *Middleſex* in the Vacation, tho' *B. R.* ſits there the next Term, when *B. R.* is adjourned, Special Commiſſioners of *Oyer and Terminer* may proceed upon it. *Ibid.*

So *B. R.* is ſo high, that a Record of that Court ſhall not be removed, if it be not warranted by Act of Parliament, but only the Tranſcript of it. 4 *Inſt.* 73. *Vide Pleader*, (3 B. 13.)

So a Record removed into *B. R.* ſhall not be afterwards remanded. 4 *Inſt.* 73. 1 *Rol.* 534. *l.* 45, 50.

[It will make a Rule for a Juſtice to cauſe to be produced at Examination at a Trial, and to give a Copy in the mean Time. *Rex* v. *Smith*, *M.* 5 *G. Str.* 126.)

[The Court granted Acceſs to the Books of the Commiſſioners for ſtating the Army-debts. *Moody* v. *Thurſton*, *P.* 6 *G. Str.* 304.]

[It may order a Suitor to have Liberty to inſpect and take Copies of City of *London*'s Books relating to Boundaries. *Warriner* v. *Giles*, *M.* 7 *G.* 2. *Str.* 954.]

[It may order one not a Party to attend the Maſter on a Reference. *Elwood* v. *Kneller*, *M.* 8 *G. Str.* 477.]

[If Plaintiff obtains Judgment againſt Defendant in Cuſtody, and inſtead of charging him in Execution, brings Debt on the Judgment, and charges him in Cuſtody; the Court will diſcharge him on common Bail, if it appears intended to deprive Defendant of the Benefit of an Inſolvent Act. *Maud* v. *Branthwaite*, *M.* 6 *G.* 2. *Str.* 943.]

[It may order Perſons who put in Bail in feigned Names, (when there are no ſuch Perſons, ſo that they could not be proſecuted on *Stat.* 21 *Jac.* 1.) and the Attorney concerned, to be ſet in the Pillory. *Anon. T.* 6 *G. Str.* 384.]

[A Judge of *B. R.* has Power to grant Warrants to be executed by all Conſtables, *&c.* through *England*; and, on Diſobedience to it, Attachment ſhall iſſue. *Rex* v. *White*, *T.* 7 *G.* 2. *B. R. H.* 42.]

(B. 2.) When *B. R.* has not Juriſdiction.

(B. 2.) Of Common Pleas.

But by the *St. M. Ch.* 9 *H.* 3. 11. all Common Pleas are reſtrained to *C. B.* 2 *Inſt.* 22. 4 *Inſt.* 71. 1 *Rol.* 536. *l.* 35.

As, *Quare Impedit*, and *Quare Incumbravit*. 1 *Rol.* 536. *l.* 40.

So, all Real Actions.

So, if a *Quare Impedit* be removed by Error into *B. R.* and Judgment affirmed; a *Quare Imcumbravit* does not lie in *B. R.* for it is a new Original. 1 *Rol.* 537. *l.* 40.

So, an Action of Debt upon a Statute.

So an Action upon the Statute of *Winton*, againſt the Hundred, does not lie by Original in *B. R.* for it is a Common Plea. *Semb.* 1 *Rol.* 536. *l.* 45. *Vide Action upon Statute*, (E. 1.)

(B. 3.) If the Damages be not alledged at 40 *s.*

So by the *St. Gloc.* 8. a Writ of Treſpaſs a Man ſhall not have before the Juſtices, if he does not affirm the Goods taken away to be of the Value of 40 *s.* at the leaſt. *Vide County*, (C. 8.)

And therefore, generally, Debt, *Detinue*, Covenant, &c. which does not amount to 40 *s.* does not lie in a Superior Court. 2 *Inſt.* 311.

But this does not extend, where the Debt or Damages are alledged at 40*s.* tho' the Verdict finds a leſs Sum. 2 *Inſt.* 312. *R.* 19 *H.* 6. 8. *b.*

Nor, to Treſpaſs *Vi & Armis*, or other Action, in which an Inferior Court has not Juriſdiction.

Nor, to an Action for Coſts, &c. given by a ſubſequent Statute, tho' they are under 40 *s.* *C. Cro. El.* 96.

[If the Cauſe of Action appears, on the Face of the Declaration, to be only 20 *s.* the Court will ſtay Proceedings; but not on Affidavit, that the Debt is ſuch, if Plaintiff demands more. *Oulton* v. *Perry*, *M.* 5 *G.* 3. 3 *B. M.* 1592. *Barnes* 497.]

[Debt for 20 *s.* *per Annum*, Rent, Damages 100 *s.* is within the Juriſdiction. *Barnes* 497.]

[A Set-off reducing Plaintiff's Demand under 40 *s.* does not affect the Juriſdiction of *C. B.* under Statute appointing a County Court for ſmall Debts. *Groſs* v. *Fiſher*, *H.* 10 *G.* 3. 3 *Wilſ.* 48.]

(B. 4.) Officers of *B. R.*

(B. 4.) The Judges, &c. *Vide Poſt*, (C. 2.)

The Chief Juſtice of *B. R.* was antiently conſtituted by Patent; but 25 *Ed.* 1. and from thenceforth, he was conſtituted by Writ. 4 *Inſt.* 74, 5.

The other Juſtices there are all made by Patent. 4 *Inſt.* 75.

And none but the Chief Juſtice can be made a Juſtice, unleſs by Patent, or Commiſſion. *Ibid.*

None can be a Judge, if he be not before a Serjeant at Law. *Ibid.*

A Grant of Chief Juſtice cannot be made to two. *Hob.* 153.

A Judge of *B. R.* was antiently, and of later Times conſtituted *durante beneplacito*. 4 *Inſt.* 75. *

[* By the St. 12 & 13 *W.* 3. 2 *Quamdiu ſe bene geſſerint.*]

A Judge of *B. R.* may be diſcharged by Writ. *Ibid.*

The Coroner, or Clerk of the Crown, ſhall be granted by the Chief Juſtice of *B. R.*

So, the Chief Clerk of the Office *ad irrotuland' Placita in B. R.* *Skin.* 354.

[By *Stat.* 32 *G.* 2. *c.* 35. 500 *l.* *per Annum* is added to the Salary of each of the *puiſnè* Judges in *B. R.*, in *C. B.* and in the Exchequer; 1000 *l.* to the Chief Baron, 200 *l.* to the Chief Juſtice of *Cheſter*, 150 *l.* to the ſecond Juſtice of *Cheſter* and to each of the *Welſh* Judges, and 300 *l.* to the Preſident of the Seſſion and to the Chief Baron, and 200 *l.* to each of the Judges in *Scotland*.]

[By *Stat.* 5 *G.* 3. *c.* 47. further Proviſion is made for ſuch Augmentation.]

(C) The Common Bench.

(C. 1.) The Juriſdiction.

THE *C. B.* ſeems to have been ſevered from the *Curia Regis*, 7 *R.* 1. or *tempore Joh.* and the Severance was eſtabliſhed by *M. Ch.* 17 *Joh.* & 9 *H.* 3. *Mad.* 539, &c.

And after the *St. M. Ch.* 9 *H.* 3. 11. all Common Pleas were determined in *C. B.* 2 *Inſt.* 21. 4 *Inſt.* 99.

And therefore all Real Actions ſhall be there determined. 4 *Inſt.* 99.

All Fines and Common Recoveries ſhall be there levied, and ſuffered. *Ibid.*

So every Action by Original, Real, Perſonal, and Mixt, may be ſued there. *Ibid.*

So where the Plaintiff or Defendant has Privilege, as an Officer, Miniſter or Clerk of *C. B.* the Action ſhall be there by Bill, without an Original. *Ibid.*

So *C. B.* may award a Prohibition to a Temporal or Spiritual Court, which exceeds it's Juriſdiction, without Original, or Plea depending before them. 4 *Inſt.* 99, 100. *R.* 12 *Co.* 109. *Vide Prohibition.*

So

So it may award an *Habeas Corpus*, if any be impriſoned without Cauſe. *Vide Habeas Corpus.*

So *C. B.* has Juriſdiction for the Puniſhment of their own Officers and Miniſters. 4 *Inſt.* 100.

(C. 2.) Officers of *C. B.*

The Judges of *C. B.* are all made by Patent. 4 *Inſt.* 100. (C. 2.) The Judges. *Vide Ante,* (B. 4.)

The King himſelf cannot be Chief Juſtice there.

The Chief Clerk of *C. B.* is the *Cuſtos Brevium*, who is appointed by the King's Patent. *Dy.* 176. *a.* (C. 3.) *Cuſtos Brevium*, and Chirographer.

So is the Chirographer. *Ibid.*

There are three Prothonotaries in *C. B.*

The Chief Juſtice grants the Office of Chief Prothonotary, and may revoke it, if he be inſufficient, without the other Juſtices. *Dy.* 150. *b.* (C. 4.) Prothonotary

So the Office of Exigenter is, by Preſcription, to be appointed by the Chief Juſtice; and a Grant of the Office by the King, tho' during a Vacancy of the Office of Chief Juſtice, will be void. *R. Dy.* 175. (C. 5.) Exigenter.

(D. 1.) The Court of Exchequer.

THE Court of *Exchequer* is an original Court, Time whereof, *&c.* held without Commiſſion as well as *B. R.* and *C. B.* 4 *Inſt.* 103.

It began ſince the Conqueſt. *Mad.* 121.

In the *Exchequer* are ſeven Courts; 1. The Court of Pleas. 2. Of Accounts. 3. Of Receipt. 4. The Court of *Exchequer-Chamber* for Matters of Law adjourned *propter difficultatem.* 5. For Error in the Court of *Exchequer.* 6. For Errors in *B. R.* by the *St.* 27 *El.* 8. 7. For Cauſes in Equity. 4 *Inſt.* 119.

(D. 2.) The Court of Pleas.

The Court of Pleas is held *coram Baronibus in Scaccario.* 4 *Inſt.* 109. *Vide Debt.* (G. 14.)

And has Juriſdiction of all Cauſes which concern the King's Profit. 4 *Inſt.* 113.

As, of Debts or Duties due to the King. 4 *Inſt.* 103, 110, 112. 2 *Inſt.* 551.

So in Matters which relate to Tenures of the King *in Capite*, or as of an Honour, or Manor, *&c.* 4 *Inſt.* 110.

So, in Matters which concern the Lands, Rents, Franchiſes, Hereditaments, Goods and Chattels of the King. 4 *Inſt.* 112. 2 *Inſt.* 551.

By the *St.* 33 *H.* 8. 39. The Court of *Exchequer*, *&c.* ſhall have full Authority to hear and determine all Debts, *Detinues*, Treſpaſſes, Accounts, Waſtes, Deceits, Negligences, Defaults, Contempts, Complaints, Riots, Suits, Forfeitures, Offences, *&c.* which ſhall grow, *&c.* upon any Matter, *&c.* aſſigned, committed, *&c.* to the ſeveral Orders of the ſame Court, *&c.* or which may concern the ſame, where the King ſhall be only Party.

And all States for Years between Party and Party concerning the Premiſſes.

And all Eſtates, Rights, Titles and Intereſts, as well of Inheritance as Freehold, *&c.*

So the Court of Pleas in the *Exchequer* has Juriſdiction, when the Plaintiff or Defendant has Privilege as an Officer or Miniſter of the Court. 4 *Inſt.* 112. 2 *Inſt.* 551. *Pl. Com.* 208. *a.*

So, if the Defendant be a Priſoner to the Court of *Exchequer*, he ſhall be privileged to be ſued there in all Perſonal Actions. 2 *Inſt.* 551.

So, an Accountant, or other who has a Title to Privilege there. 2 *Inſt.* 551. *Pl. Com.* 208. *a.*

So, a Servant to an Officer there; as, to the Treaſurer, *&c.* *Sav.* 10.

So, if the Plaintiff be Debtor to the King, he may ſue in the *Exchequer* againſt any, for a Debt or Duty to him, upon a Suggeſtion. *Quo Minus, &c.* 2 *Inſt.* 551. 4 *Inſt.* 111, 112. *Pl. Com.* 208. *a.*

So, the King's Farmer for Tithes, Parcel of the Poſſeſſions leaſed to him; tho' the Right of the Tithes be in Debate. 1 *Rol.* 538. *l.* 40. *Hard.* 177.

So a Suit between a Parſon and Vicar for Tithes, where the King is Patron, ought to be in the *Exchequer*. *R.* 1 *Rol.* 538. *l.* 45.

So, a Prohibition to a Libel in the Spiritual Court for Tithes of a Copyholder of the King's Manor. *R.* 1 *Rol.* 539. *l.* 10.

So, Treſpaſs, *&c.* againſt him who diſtrains for an Amerciament, *&c.* in the King's Manor. *R.* 1 *Rol.* 539. *l.* 15.

Ejectment by him, who claims Title by an Extent in Aid. *R. Hard.* 193, 176.

Or, by him who has Privilege. *Sav.* 10, 12.

Every Action which concerns the King's Revenue immediately. *R. Hard.* 193. 4 *Inſt.* 112.

And if begun in another Court, it may be removed. *Hard.* 176.

[The Court will remove an Action bronght in another Court for the Seizure of a Ship, though no Information is filed here; but after Information tried here, and Verdict for Defendant, the Court will not remove an Action brought in another for the Seizure. *Bercholt* v. *Candy, in Sc. H.* 1718. *Bunb.* 34.]

[The Court will remove *Trover* brought againſt an Officer for Goods ſeized and condemned, and alſo a Great Coat, Saddle, *&c.* on Affirmation that they were not ſeized, and only thrown in for a Colour. *Penny* v. *Bailey, M.* 1731. *Bunb.* 309.]

[But the Court will not remove an Action brought in *B. R.* for taking Ropes and Cordage, againſt an Officer who had ſeized two Cables, one of which only was foreign, (and actually condemned in this Court.) *Barkley* v. *Walters, M.* 1731. *Bunb.* 306.]

So falſe Impriſonment or other Action againſt an Under-ſheriff may be in the *Exchequer*; tho' the Sheriff be the Officer of the Court: For it takes Notice alſo of the Under-ſheriff. *R.* 1 *Rol.* 539. *l.* 30.

So, if a Man having Privilege in the *Exchequer*, begins a Suit there, and afterwards ſues the ſame Defendant, for the ſame Cauſe, in *B. R.* it ſhall be a Contempt. *Semb. Sav.* 14.

So the Plaintiff in any Caſe may ſue for Tithes, *&c.* in the *Exchequer*, when he pays Tenths and Annates to the King. *R. Cont.* 3 *Leo.* 258.

So he may have Debt there upon the *St.* 2 & 3 *Ed.* 6. 13. for not ſetting out his Tithes. *Sav.* 131.

But after the *St. of M. Ch.* 9 *H.* 3. 11. explained by the *St. Art. ſup. Char.* 28 *Ed.* 1. 4. Common Pleas (except in Caſe of Privilege) ſhall not be ſued in the *Exchequer*. 2 *Inſt.* 23, 551. 4 *Inſt.* 113. 1 *Rol.* 538. *l.* 50. 539. *l.* 5. *Mad.* 141, 145, 544, 594. *Pl. Com.* 208.

And an Accountant ſhall not have Privilege to be ſued there, if he has not entred into his Account. 4 *Inſt.* 112.

So, a Collector of Tithes ſhall not. *Ibid.*

So the King's Debtor ſhall not have the Privilege of the *Exchequer*, if he be before ſued elſewhere. 4 *Inſt.* 112. *Dy.* 328.

Or, if his Debt be diſcharged. *R. Sav.* 15. But *Semb. cont. Sav.* 33. *R. Sav.* 51.

So, if a Suit be elſewhere, upon a collateral Matter, which does not directly concern the King's Revenue, it ſhall not be ſtayed upon Pretence of Privilege in the *Exchequer*; as, if falſe Impriſonment be in *B. R.* for an Impriſonment for a Fine impoſed by Commiſſioners of Exciſe. *R. Hard.* 193.

So a Defendant, ſued there by Information upon a penal Statute, ſhall not have Privilege to ſue there, if he be not convicted, or does not confeſs the Information. *Sav.* 53.

So

So an Officer, who becomes Party by Covin in order to obtain Privilege, ſhall be diſallowed. *Sav.* 12.

So an Executor has no Privilege to ſue there, if he only alledges that the Defendant does not pay, *Quo minus*, &c. he is able to pay his Debt to the King; for he cannot pay it with his Teſtator's Money. *Sav.* 39.

So an Information by a Common Informer does not lie in the *Exchequer* upon a penal Statute, which gives Remedy only before Juſtices of Peace, *Oyer and Terminer*, Aſſiſe, &c. *R. Sav.* 6.

Otherwiſe by the Attorney-General. *Sav.* 134.

Semb. that it lies if no Court is directed by the Statute. *Hard.* 420.

So a Plaintiff in a Suit by Engliſh Bill, or in the *Exchequer-Chamber*, has no Privilege to be ſued in the *Exchequer* only. *Sav.* 51.

So a Servant to an Officer in the *Exchequer*, ſhall not have Privilege there, if he be not attendant upon his Perſon as a menial Servant, or upon his Office. *Bro. Privilege* 8, 16.

If a Suit be in the *Exchequer*, where the Parties have no Privilege, &c. it will be *coram non Judice*. *Sav.* 36.

(D. 3.) The Court of Accounts.

The Barons of the *Exchequer* are the Sovereign Auditors of the Kingdom. 4 *Inſt.* 115.

This Court is held *coram Theſaurario & Baronibus*.

And may audit all Accounts of Officers, and others accountant to the King. 4 *Inſt.* 113. *Mad.* 628.

Which may be audited in Court, or by Commiſſion upon the *St.* 6 *H.* 4. 3. 4 *Inſt.* 117.

And ought to be given upon Oath. 4 *Inſt.* 113.

Divers Officers ought to account annually; as, the Treaſurer of *Ireland*, Keeper of the Wardrobe, &c. 4 *Inſt.* 113, 117.

So, a Sheriff, Eſcheator, Aulnager, Comptroller, &c. *Vide Viſcount*, (G. 1, &c.)

It is more for the Benefit of the King, that the Account be taken by the Court, than by Commiſſion. 4 *Inſt.* 113.

But the Treaſurer of the King's Chamber ſhall account only to the King, and not in the *Exchequer*. *Ibid.*

As to Account before Auditors aſſigned by the Court, or in Equity, *Vide Accompt*, (E. 7, &c.)—*Chancery*, (2 A. 1, &c.)

As to Account in the *Exchequer* by a Sheriff, *Vide Viſcount*, (G. 1, &c.)

(D. 4.) The Court of Receipt.

The Court of Receipt is intirely under the Treaſurer. *Ld. Som. Arg.* 54.

The principal Officers of this Court are the Treaſurer, and Chamberlains. *Sav.* 38.

Under them are the Clerk of the Pells, and four Tellers, and the Auditor of the Receipt. *Vide Poſt*, (D. 14, 15.)

By the *St.* 8 & 9 *W.* 3. 28. A Teller, on Receipt in his Office of any Money, &c. ſhall without Delay throw down into the Tally-Court (if the Officers be there) a Bill or Bills for the Money, but not till the Receipt, whereby a Tally may be ſtruck for it.

And the firſt Clerk in the Offices of the Auditor of the Receipt, of the Clerk of the Pells, and of the four Tellers, ſhall be ſworn to Performance of Duty.

The Auditor of Receipt, for Fee, ſhall enter and inrol all Patents and Letters of Privy Seal for iſſuing the King's Treaſure, and draw the Orders, or make the Debentures for iſſuing it, and keep Entries thereof, &c. ſhall weekly take the Teller's Accounts, and make Certificates of all Receipts, Iſſues, and Remains, &c. and of all Monies impreſt, and tranſmit the Impreſt-Rolls to the King's Remembrancer, &c.

The Clerk of the Pells ſhall inrol all ſuch Patents and Letters of Privy-Seal, record the Teller's Receipts and Iſſues, certify them to the Treaſury, examine the Impreſt, Certificates, and Rolls, *&c.*

[It is no Office of Record, but only in Matters relating to the King's Revenue. *Colegave* v. *Juſon*, *M.* 1744. 3 *Atkyns* 197.]

(D. 5.) The Exchequer-Chamber.

(D. 5.) For Cauſes of Difficulty.

If the Court of *B. R.* or *C. B.* be equally divided, or apprehend great Difficulty in the Caſe, it may be adjourned into the *Exchequer-Chamber*, to be argued by all the Juſtices of *England*. *Co. L.* 71. *b.*

And this was by the *St.* 14 *Ed.* 3. 5. for before, it was determined by Parliament. *Co. L.* 72. *a.*

And now by the ſame Statute, if the Juſtices in the *Exchequer-Chamber* are equally divided, it ſhall be determined at the next Parliament by a Prelate, two Earls, and two Barons, with the Advice of the Lords Chancellor and Treaſurer, the Judges, and other of the King's Council as ſhall be deemed convenient. *Co. L.* 71, 2.

If after Adjournment a Judge dies, the Cauſe goes on. 2 *Bul.* 146, 7.

If after Argument another Judge be made, he ſhall not give his Opinion. 2 *Bul.* 147.

But it ſhall not be adjourned to the *Exchequer-Chamber* upon Motion before Argument, and after Argument only, if the Court be divided, or for Difficulty adjourn it of themſelves. *R.* 2 *Bul.* 146, 7.

(D. 6.) For Errors. *Vide Pleader.* 3 B. 4. 5.)

So by the *St.* 31 *Ed.* 3. 12. Error in the *Exchequer* ſhall be examined in the *Exchequer-Chamber* before the Chancellor and Treaſurer, taking to them Juſtices and Sages, whom they think meet, and calling before them the Barons to hear the Cauſes of their Judgment.

And by the *St.* 27 *El.* 8. Error in *B. R.* in Debt, *Detinue*, Covenant, Account, Action upon the Caſe, Treſpaſs, and Ejectment, ſhall be examined there by the Juſtices of *C. B.* and Barons of the *Exchequer*.

By the *St.* 31 *Ed.* 3. The Chancellor and Treaſurer of *England* are the Judges, and not the Treaſurer of the *Exchequer*. 4 *Inſt.* 105. *Vide Pleader*, (3 B. 5.)

And therefore the Writ of Error ought to be directed to the Treaſurer of the *Exchequer* and Barons, to bring the Record of the Judgment before the Lord Treaſurer, and Chancellor; for the Treaſurer of the *Exchequer* and the Barons have the Cuſtody of the Records there. 4 *Inſt.* 105. *Sav.* 36, 39.

Before the *St.* 31 *Ed.* 3. 12. All Errors in the *Exchequer* were redreſſed in Parliament, or by the King's Commiſſion. 4 *Inſt.* 105, 6.

[The Exchequer-Chamber may try a Releaſe of Errors, and award a *Venire* under the Seal of the Court of Exchequer. *Gomez Serra* v. *Munez*, *H.* 2 *G.* 2. *Str.* 821.]

(D 7.) For Cauſes in Equity.

A Court of Equity has been held in the *Exchequer-Chamber* Time whereof, *&c.* before the Lord Treaſurer, Chancellor, and Barons, and did not begin by the *St.* 33 *H.* 8. 39. *Semb.* 4 *Inſt.* 119. *Vide* 4 *Inſt.* 109.

And the Juriſdiction extends to all Cauſes, which concern the King, or his Profit. 4 *Inſt.* 118.

Or, where the Plaintiff or Defendant has Privilege there. *Vide Ante*, (D. 2.)

So if there be a Suit by one, who has Privilege, there may be a Croſs Bill without Privilege. *R. Hard.* 160.

There may be a Suit for Tithes by Engliſh Bill in the *Exchequer-Chamber*. *Vide Diſmes*, (M. 13, &c.)

So every Cauſe, which may be ſued in the Dutchy-Court, may be commenced in the *Exchequer-Chamber*. *Hard.* 171.

So a Bill in the Nature of falſe Judgment may be brought in the *Exchequer-Chamber*, for Reverſal of a Judgment againſt a Copyholder in the King's Manor. *R.* 1 *Rol.* 539. *l.* 20. *Vide Copyhold*, (P. 2.)

So

So a Bill for a Thing, which concerns the Inheritance of the King, may be brought here; for it is a Court of Revenue, as well as a Court of Equity. *Hard.* 50.

So upon a Bill here, a Mill erected within the King's Manor, where the King has the Multure to his Mill there, may be removed. *Hard.* 175.

And if a Mill be erected out of the Manor, tho' it be not removed, Griſt there by the King's Tenants ſhall be reſtrained. *R. Hard.* 175, 177.

But the Mill ſhall not be demoliſhed. *Hard.* 175, 184.

So any Nuſance to the Inheritance of the King, may be there redreſſed. *Hard.* 162.

So, by the *St.* 33 *H.* 8. 39. If any, againſt whom a Debt or Duty is demanded for the King, can ſhew any Matter in Law or good Conſcience in Diſcharge, *&c.* the Court ſhall have Power to diſcharge, *&c.* And therefore he may have Relief by Engliſh Bill, as well as by Plea. *R.* 7 *Co.* 19, 20. *Sir Thomas Cecil.*

But a Matter of Freehold ſhall not be determined upon a Bill, without a Trial at Law. *Vide Chancery*, (X.—4 V.)

Tho' it concerns the Freehold of the King. *R. per* 2 *J. Parker cont.* 1656. *Hard.* 51.

So the Plaintiff ought to alledge himſelf Debtor and Accountant to the King, in a Bill, as well as in an Action; otherwiſe the Court has not Juriſdiction. *Vide Ante*, (D. 2.)

So, if the Plaintiff ſues in his own Right, and alſo as Adminiſtrator to *B.* he ought to alledge himſelf Debtor, and alſo that *B.* was Debtor; otherwiſe there is no Juriſdiction to ſue as Adminiſtrator. *R. Hard.* 60.

[If a Bill be preferred for a Matter or Sum below the Dignity of the Court, it may be diſmiſſed on Motion, or on Demurrer. *Per Price* B. *M.* 1717. *Bunb.* 17.]

[But if there is Fraud, or complicated Matter, it will be retained. *Ibid.*

For Proceedings in the Cauſes in Equity in the *Exchequer*, *Vide* the ſimilar Articles in Title *Chancery*.

(D. 8.) The Officers of the *Exchequer*.

(D. 8.) The Lord Treaſurer. *Vide Officer* (E. 1.)

The firſt Officer of the *Exchequer* is *Dominus Theſaurarius Angliæ*. 4 *Inſt.* 104.

Who was antiently conſtituted by the Delivery of a golden Key; and now, by the Delivery of a white Staff. 4 *Inſt.* 104.

The Lord Treaſurer of *England* has now, by Letters Patents, granted to him the Treaſury of the *Exchequer*, which was antiently a diſtinct Office. 4 *Inſt.* 105. *Mad.* 568.

By his Oath he is bound *to ſerve the King truly in his Office, to do Right therein to all, truly to keep and diſpend the King's Treaſure, truly to counſel the King, and his Counſel keep, not to know nor ſuffer the King's Hurt, or Diſheriting if he can lett it, if not, to diſcloſe it clearly to the King, and to purchaſe the King's Profit all he reaſonably may.* 4 *Inſt.* 104.

As Treaſurer of the *Exchequer*, he with the Barons has the Cuſtody of the Records of the *Exchequer*. 4 *Inſt.* 105.

He ought to have a Warrant for the diſpoſing of all Treaſure which he diſpoſes of; for having only the Cuſtody of the Treaſure, he cannot diſpoſe of it *ex Officio*. *Mo.* 476.

(D. 9.) The Chancellor.

The Chancellor of the *Exchequer* has the Cuſtody of the Seal of the *Exchequer*. 4 *Inſt.* 104, 119. *Mad.* 580.

And now has uſually the Office of Under-treaſurer of the *Exchequer*. *Mad.* 578.

And is Comptroller of the Pipe. 4 *Inſt.* 106.

And appoints the two Appraiſers of Goods ſeiſed for not paying Cuſtoms, and directs whether the Party ſhall have them at ſuch Price, or not. 4 *Inſt.* 104.

And, in the Vacancy of a Treaſurer, does every Thing in the Receipt of the *Exchequer*, which the Treaſurer may do. 4 *Inſt.* 104.

The

(D. 10.) The Barons.

The Chief Baron and the other Barons of the *Exchequer* are conſtituted by Letters Patents. *Mad.* 582. 4 *Inſt.* 117.

And were antiently Barons and Peers of the Realm. 4 *Inſt.* 103. *in Marg.*

The Treaſurer and Barons are the principal Officers of the *Exchequer*. *Sav.* 38.

The Barons are the ſole Judges of the Court of Pleas; tho' the Treaſurer of the *Exchequer* is joined with them in the Cuſtody of the Records of the Court. 4 *Inſt.* 105, 109.

And ſhall take an Oath to do Right to all, *&c.* 4 *Inſt.* 109. *Mad.* 586, 7.

They may diſcharge and reſpite Debts due to the King. *Mad.* 137.

But the Court of Equity there, is before the Treaſurer, Chancellor and Barons. 4 *Inſt.* 109.

(D. 11.) The Chamberlains.

The Chamberlains of the *Exchequer* have their Office uſually for Life, *exercendum per ſe aut Deputat'*. 4 *Inſt.* 106.

And appoint two Deputies. 4 *Inſt.* 107. *Mad.* 732.

Antiently they had the Keys of the Cheſts, weighed the Money, and laid up the Bags of 100*l.* *Co. L.* 106. *a.*

And now they have the Keys of the Treaſury where the Records of Leagues, Doomſday-Book, Pleas of Juſtices in *Eire*, and of the Foreſt, *&c.* are. 4 *Inſt.* 106. *Co. L.* 106. *a.* *Compl. Att. in Exch.*

But they cannot uſe their Keys till the Auditor of Receipt brings the Key of the Treaſurer. *Compl. Att.*

So the Cuſtody of the Treaſure and Record belongs to them jointly with the Treaſurer. *Mo.* 475.

To them belongs the Office of one of the Door-keepers of the Receipt. 4 *Inſt.* 106.

Their Under-Chamberlains cleave the Tallies, and read them when written by the Clerk of the Tallies, that the Clerk of the Pells and Comptroller of the Pells may ſee their Entries be true. 4 *Inſt.* 107.

(D. 12.) Remembrancers.

There are three Remembrancers, of the King, of the Treaſurer, of the Firſt-Fruits. 4 *Inſt.* 106. *Mad.* 714.

The two firſt are in the King's Gift, and have each two Secondaries. 4 *Inſt.* 106, 107, 108.

By the Stat. 5 *R.* 2. 14. The ſaid two Remembrancers ſhall be ſworn to ſee all Writs of the Great or Privy Seal, ſent to the *Exchequer* for Diſcharge of any Perſon of any Demand in the *Exchequer*, put into due Execution by thoſe to whom it pertaineth. *Vide* 37 *Ed.* 3. 4.

And ſhall every Term make a Schedule of all ſo diſcharged, and ſend it to the Clerk of the Pipe, *&c.*

The King's Remembrancer, by his Office, ought to make Proceſs againſt Collectors of the Cuſtoms, *&c.* enter in his Office all Recognizances acknowledged before the Barons, take Bonds for the King's Debts, *&c.* and make Proceſs upon them, make Proceſs upon all Informations upon penal Statutes (which are entered in his Office) and Bills of Compoſition upon them, enter the Stallment of Debts, keep all Conveyances, *&c.* of Lands, *&c.* granted to the King; and all Proceedings by *Engliſh* Bill are entred there. 4 *Inſt.* 108.

So he ought to tax all Bills of Coſts in the *Exchequer*, *Rules and Orders in Exchequer* 16. *Rule* 42.

The Treaſurer's Remembrancer makes Proceſs by *Fieri facias*, and Extent for the King's Debts, *&c.* enters upon Record if Accountants pay their Proffers, *&c.* 4 *Inſt.* 108.

But if a Remembrancer be made a Baron of the *Exchequer*, his Patent ſhall be void. *Dy.* 197. *b.*

(D 13.) Clerk of the Pipe.

The Clerk of the Pipe is, by his Patent, deſcribed to be *Ingroſſator magni Rotuli in Scaccario*, 4 *Inſt.* 106. *Mad.* 717.

And all Accounts and Debts to the King are collected out of the Offices of the King's and Treaſurer's Remembrancer, and put into a great Roll, called *the Pipe*, and then they are duly charged. 4 *Inſt.* 106.

He has alſo a Roll of Reverſions, which comprehends Grants for Years, for Life, and in Tail, without Rent, &c. to the Intent that a Writ may iſſue, if need be' to inquire whether the Leſſee be dead, or the Entail determined. *Ibid.*

There are two Secondaries of the Pipe. 4 *Inſt.* 107.

The Chancellor of the *Exchequer* is Comptroller of the Pipe. *Vide Ante* (D. 9.)

(D. 14.) The Auditors, &c.

There are five Auditors in the *Exchequer*, who take and audit all Accounts of Receivers, Collectors, &c. 4 *Inſt.* 106.

The Auditor of the Receipt, who files and enters the Bills of the Tellers, certifies to the Lord Treaſurer every Week the Money received, makes a Debenture to each Teller before he pays any Money, and audits their Accounts. 4 *Inſt.* 107.

He has alſo the Cuſtody of the Black Book of Receipts, and of the Lord Treaſurer's Key; and ſees that the Tellers lock up their Money in the Treaſury. *Ibid.*

There are two Auditors of the Preſt, who audit all Accounts of Money impreſt to any Perſon. 4 *Inſt.* 107. And foreign Accounts. *Mad.* 729.

But an Auditor cannot determine whether a Licence or Grant be good. 4 *Inſt.* 106.

Neither can he put any Thing in Charge; for he only audits Accounts. *Ibid.*

Neither can he make a *Super*, but only Money received and audited before. 4 *Inſt.* 167.

(D. 15.) Foreign Oppoſer, &c.

The Foreign Oppoſer oppoſes all Sheriffs, &c. in their Accounts of the Green-Wax, *viz.* of all Fines, Iſſues, Amerciaments, Recognizances, &c. for which Proceſs is ſent to the Sheriff, ſealed with Green-Wax. 4 *Inſt.* 107.

The Clerk of the Eſtreats provides that Summons for all Fines, &c. eſtreated into the *Exchequer* be iſſued. *Mad.* 731.

The Clerk of the *Nichils* makes a Roll of the Sums in Proceſs, for which the Sheriff returns *Nichil*, and delivers it to the Treaſurer's Remembrancer. 4 *Inſt.* 107.

The Clerk of the Summons. *Ibid.*

The Clerk of the Pleas, has the Office in which all Suits are entred. *Ibid.*

The Clerk of the Tallies, who makes Tallies for Debt, or for Reward. 4 *Inſt.* 107, 8.

The Clerk of the Pells enters all Receipts or Bills of the Tellers, *in pelle Receptorum*; and all Payments *in pelle Exituum*. 4 *Inſt.* 108. *Mad.* 739.

There are four Tellers, who receive all Money for the King, give a Bill of Receipt to the Clerk of the Pells, who charges them; pay all Money by Warrant of the Auditor of the Receipt, and make a Book of Receipts and Payments for the Lord Treaſurer. 4 *Inſt.* 108. *Mad.* 739. *Vide Ante*, (D. 4.)

The Uſher of the *Exchequer* is an antient Officer, who has under him four Under-Uſhers. *Mad.* 718. *Dy.* 213. *b.*

The Uſher of the Receipt.

The *Peſor* and *Fuſor* who weigh and melt the Coin paid in the Receipt of the *Exchequer*. *Mad.* 540, 1.

The Marſhal has the Cuſtody of Debtors committed during the Term, receives all Offices found *Virtute Officii*, and delivers them to the Treaſurer's Remembrancer, and appoints Auditors for the Accounts of Sheriffs, &c. 4 *Inſt.* 107. *Mad.* 725.

Vide 4 *Inſt.* 107, 8.

(E) The Court of Chivalry.

(E. 1.) Who are the Judges.

THE Court of Chivalry, or Court Martial, is held before the Lord Conſtable, and Earl Marſhal of *England*. 4 *Inſt.* 123. *Ca. Parl.* 66. *Vide Officer*, (E. 2, 3.)

The Conſtable was antiently conſtituted for Life, or for him and his Heirs: but 13 *H.* 8. it was forfeited by the Attainder of the Duke of *Bucks*, and was never after granted but *pro hac vice*. 4 *Inſt.* 127. *Spel. Gl.* 146.

But the Earl Marſhal cannot hold Plea without the Conſtable. *Ca. Parl.* 66.

Not for the marſhalling of Funerals, Arms, *&c.* *R. cont.* 1 *Sid.* 352. 1 *Lev.* 230. *Acc. Ca. Parl.* 66.

And therefore, where the King refuſes to make a Conſtable, the Plea cannot be determined in the Court of Chivalry. *Co. L.* 74. *b.*

(E. 2) What Juriſdiction it has.

By the *St.* 13 *R.* 2. *St.* 1. *c.* 2. it is declared, That this Court has Coniſance of Contracts touching Deeds of Arms, and of War out of the Realm. *Vide Co. L.* 391. *b.* 4 *Inſt.* 123.

And of Things which touch War within the Realm, which cannot be determined by the Common Law; with other Uſages and Cuſtoms to the ſame Matters pertaining.

The Plaintiff ſhall by his Petition declare plainly his Matter, before any ſhall be cited to anſwer thereto.

And therefore if a Man be accuſed of Treaſon, Miſpriſion, *&c.* done out of the Realm, it ſhall be tried before the Conſtable and Marſhal. 4 *Inſt.* 124.

And tho' by the *St.* 26 *H.* 8. 13. 35 *H.* 8. 2. & 5 *Ed.* 6. 11. Treaſons and Miſpriſions, *&c.* may be enquired of in *B. R.* or before ſpecial Commiſſioners, if done out of the Realm, as well as done in it; yet this does not take away the Juriſdiction of the Conſtable and Marſhal. 4 *Inſt.* 124. 2 *Ruſh.* 107.

So Murder, Homicide, *&c.* out of the Realm, ſhall be tried upon Appeal before the Conſtable and Marſhal. *Co. L.* 74.

So, if the mortal Stroke be given out of the Realm, tho' the Death be within the Realm. *Co. L.* 74. *b.*

So the Court has an abſolute Juriſdiction, by Preſcription, in Matters of Honour, Pedigree, Deſcent, and Coat-Armour. 4 *Mod.* 128.

But by the *St.* 13 *R.* 2. *St.* 1. *c.* 2. If a Plea be commenced before the Conſtable and Marſhal of any Matter that may be determined by the Common Law of the Land, a Privy Seal ſhall be directed to the Conſtable and Marſhal to ſurceaſe, *&c.*

So by the *St.* 8 *R.* 2. 5. All Pleas that ought to be diſcuſſed at Common Law, ſhall not be held before the Conſtable and Marſhal.

And therefore, a Prohibition lies, as well as a Privy Seal, if the Court proceeds upon a Matter out of their Juriſdiction. *R. Ca. Parl.* 63. *Adm.* 4 *Mod.* 128.

As, if the Suit be there for the Ordering of a Funeral. *Ca. Parl.* 64.

For Encroachment upon the Office of an Herald; for an Action upon the Caſe lies for it at Common Law. *Ca. Parl.* 65.

So the Conſtable and Marſhal have no Juriſdiction of a Thing done upon the High Sea, tho' it be out of the Realm; for it belongs to the Admiral. 4 *Inſt.* 124.

So the Marſhal has no Juriſdiction alone, if no Conſtable be made, at leaſt, *pro hac vice*. 2 *Ruſh.* 107.

The Court of Chivalry proceeds according to the Uſages and Cuſtoms of the ſame Court. 4 *Inſt.* 125.

And if the Uſage fails, according to the Civil Law in the Caſe of Arms. 4 *Inſt.* 125. *Co. L.* 391. *b.* 2 *Ruſh.* 107.

The Trial in the Court of Chivalry ſhall be by Combat, or by the Teſtimony of Witneſſes. *Co. L.* 74. *a.*

As to Trial by Combat. *Vide Battle.*

By Attainder upon a Judgment in the Court of Chivalry Lands are not forfeited, nor the Blood corrupted. 4 *Inſt.* 125.

After Sentence in the Court of Chivalry, the Party grieved may appeal to the King. *Ibid.*

(E. 3.) What Officers belong to the Court.

The Heralds are Officers attendant upon the Court of Chivalry. 4 *Inſt.* 125. The Heralds.

There are Three Kings of Arms, *Garter*, *Clarencieux*, *Norroy*; and each of them has ſeveral Heralds under him. *Vide Norroy.*

A King of Arms ſhall be created by the King's Patent.

And the Title of *Garter*, *&c. King of Arms* is Parcel of his Name.

So a Herald ſhall be created by Patent. 4 *Inſt.* 127.

And he ſhall be a compleat Officer by his Patent, tho' he has no other Inveſtiture. *R. Noy* 150.

And tho' he never was a Purſuivant, yet by the Rules of the Office this is required. *Noy* 150.

The Heralds were incorporated by *R.* 3. and afterwards by Charter 3 *Ph. & M.* 4 *Inſt.* 126.

And by Patent 3 *Ed.* 6. they are diſcharged of all Tolls, Subſidies, *&c. Ibid.*

It belongs to *Garter* King of Arms, to marſhal all publick Funerals of the Nobility, and to *Clarencieux* and *Norroy*, the publick Funerals of the Gentry, and to direct what Banners and Arms ſhall be uſed. *R. per* 3 *J.* 1 *Sid.* 353. (*Vide Ca. Parl.* 63. 4 *Inſt.* 126.

(F) The Court of the Marſhalſea.

THE Court of the *Marſhalſea* is held before the Steward and Marſhal of the King's Houſhold. 4 *Inſt.* 130. 10 *Co.* 72. *a.* 6 *Co.* 12. *a.*

And it has Original Juriſdiction within the Verge, *viz.* within the Circuit of twelve Miles round the Manſion of the King. 4 *H.* 6. 8. 4 *Inſt.* 130. *Ld. Bac. Charge at the Seſſions of the Verge. Vide the St.* 33 *H.* 8. 12.

The Juriſdiction was general, by the Common Law, in all Cauſes, criminal and civil, real, perſonal and mixt, within the Verge, as Juſtices in *Eyre*, or Vicegerents of *B. R.* there: But this is now taken away by the *St. Art. ſup. Chart.* 3. 10 *Co.* 71. 2 *Inſt.* 549.

And now the Coroner within the Verge may enquire of Murder, Homicide, *&c.* done within the Verge, with the Coroner of the County, by the *St.* 28 *Ed.* 1. *Art. ſup. Chart.* 3.

And his Authority is the ſame with the Coroner of the County. *R.* 4 *Co.* 46. *Vide the St.* 33 *H.* 8. 12.

But *B. R.* Juſtices of Gaol-Delivery, of the Peace, *&c.* have a general Juriſdiction, and may inquire of Felony, *&c.* within the Verge. *R.* 4 *Co.* 46.

And if the Coroner of the County be alſo Coroner of the Verge, an Indictment before him is good. *R.* 4 *Co.* 46. *a.*

So there was alſo a particular Juriſdiction in the Marſhalſea by the Common Law, confirmed by the *St.* 28 *Ed.* 1. *Art. ſup. Chart.* 3. To have Coniſance of Treſpaſs *Vi & Armis* within the Verge, where the Plaintiff or Defendant was of the King's Houſhold; and of Debt, and Covenant, when both were within the King's Houſhold. 10 *Co.* 71, *&c.* 2 *Inſt.* 548. *R.* 6 *Co.* 20. *b. Conf. by the St.* 15 *H.* 6. 1. *D.* 1 *Sid.* 180.

So there is the *Palace-Court* in the Marſhalſea, which has Juriſdiction within the Verge of twelve Miles, tho' neither Party be of the Houſhold. *Sal.* 439.

But the Marſhalſea cannot hold Plea of Freehold.

Nor, of Treſpaſs upon the Caſe, or other Treſpaſs which is not done *Vi & Armis.* 2 *Inſt.* 548. 10 *Co.* 76. *a.*

Nor, in Ejectment.

Nor, in *Trover*, *Aſſumpſit*, *&c.* 10 *Co.* 76. *a. R.* unleſs both Parties are of the Houſhold. 2 *Rol.* 498.

If the Marſhalſea holds Plea of a Thing done out of the Verge, the Proceedings are void, and *coram non Judice. Pl. Com.* 37. *b.*

So, in Treſpaſs, when neither Party is, in Debt and Covenant, when both are not of the King's Houſhold. *R.* 10 *Co.* 77. *a.*

If

If the Plaintiff or Defendant be alledged falſely to be of the Houſhold, by the *St.* 15 *H.* 6. 1. it may be averred to the contrary; or the Party may have a *Superſedeas* directed to the Steward and Marſhal. 10 *Co.* 75. *b.*

The Marſhalſea is a Court of Record. 10 *Co.* 69. *b.*

The Proceedings are by Bill, and not by Original. 10 *Co.* 73. *a.*

If the King's Houſhold removes out of the Verge, the Actions there depending are diſcontinued. 10 *Co.* 73. *a.*

Error of a Judgment there was in Parliament before the *St.* 5 *Ed.* 3. 2. and 10 *Ed.* 3. *St.* 2. 10 *Co.* 69. *b.*

(G) The Court of Green-Cloth.

SO, by the Common Law, a Court is held before the Lord Steward, Treaſurer of the Houſhold, Comptroller, Maſter, Cofferer, two Clerks Comptrollers, who ſit at a Table with a Green-Cloth *in Domo Comput' Hoſpitii Regis.* 4 *Inſt.* 131.

And they have Juriſdiction to take an Account of all the Expences of the King's Houſhold. 4 *Inſt.* 131.

To make Proviſion for the Houſhold, and Payment for ſuch Proviſion. *Ibid.*

For the good Government of the Servants of the Houſhold, who are paid, by the Lord Chamberlain thoſe above Stairs, by the Cofferer thoſe below. *Ibid.*

(H) The Court of the Steward of the King's Houſehold.

SO by the *St.* 3 *H.* 7. 14. The Steward, Treaſurer, and Comptroller of King's Houſe, or one of them, may inquire by twelve of the Checque-Roll of the Houſhold, if any Servant of the Checque-Roll, under a Lord, make any Confederacies, Compaſſings, &c. with any, to deſtroy the King, or any Lord of the Realm, or any other ſworn of the King's Council, or the Steward, Treaſurer, or Comptroller of the Houſhold, and if found, he may be put to anſwer. And they, or two of them, may hear and determine ſame Offence, (which ſhall be Felony) by twelve other of the Houſhold, againſt whom no Challenge but for Malice. And if the Defendants be found guilty by Confeſſion or otherwiſe, they ſhall have Judgment as Felons attaint by the Common Law.

So by the *St.* 33 *H.* 8. 12. All Treaſons, Miſpriſions, Murders, Manſlaughters, Bloodſheds, *&c.* in any Palaces or Houſes of the King, or other Houſe where he reſides, ſhall be inquired, tried, *&c.* before the Lord Great Maſter or Lord Steward, and, in his Abſence, before the Treaſurer and Comptroller, and the Steward of the Marſhalſea, *&c.* or two of them, whereof the ſaid Steward of the Marſhalſea to be one, without further Commiſſion.

And tho' the King be removed from the Palace, where the Offence was done before the Inqueſt or Trial, it ſhall be enquired of, tried, *&c.* before the King's ſaid Miniſters, or two of them, by his Servants of the Checque-Roll at the Palace, *&c.* where the King is reſiding.

And all Inquiſitions by the Coroner of the Houſhold ſhall be returned before them.

And they may iſſue a Precept to the Clerks Comptrollers, Clerks of the Checque, and Clerks Marſhal to return Twenty-four of the Yeomen Officers of the Checque-Roll, of whom they may appoint any Number more than Twelve to inquire of ſuch Treaſons, Miſpriſions, *&c.*

So there is a Commiſſion uſually granted to Officers within the Verge to be Juſtices of the Peace, and *Oyer and Terminer*, for Riots, and other Offences there. *Mod. Ca.* 76.

(I) The Portmote Court.

THE *Portmote* is a Court held in a Port, or Haven of the Kingdom. 4 *Inſt.* 148.

The Court of High Commiſſion.

Is taken away by the *St.* 16 *Car.* 1. 11.

(K) The Court of Star-Chamber.

AN antient Court was holden *coram Rege & Concilio ſuo in Camera*, which was the Court of Star-Chamber. 4 *Inſt.* 60. 2 *Ruſh.* 472.

And therefore, it was not erected by the *St.* 3 *H.* 7. 1. but that Act affirmed the Juriſdiction of the Court, and was directory to its Proceedings in ſeveral Particulars. 4 *Inſt.* 62.

The Juriſdiction of the Court extended to the Examination and Puniſhment of Oppreſſions, and other exorbitant Crimes of great Men, Bribery, Extortion, Maintenance, Embracery, Forgery, Perjury, Spreading of falſe Rumours, Libels, Riots, Routs, unlawful Aſſemblies, Miſdemeanors in Sheriffs or Bailiffs, Frauds, Duels, Challenges, and other extraordinary Offences, purſuant to the Laws and Cuſtoms of the Realm. 4 *Inſt.* 63.

And the Proceeding was by Information, or Bill, Examination of Parties upon Interrogatories and Witneſſes. *Ibid.*

The Informations, Bills, Anſwers, Replications and Decrees were in *Engliſh*, ingroſſed in Parchment, and filed. *Ibid.*

The Proceſs was by *Subpœna*, Attachment, Commiſſion of Rebellion, *&c.* all under the Great Seal. 4 *Inſt.* 66.

But the Court had no Juriſdiction, except for Things which were contrary to the Common Law, or a Statute. 4 *Inſt.* 63.

Nor, for an Offence which touched the Life or Member of a Man. 4 *Inſt.* 66.

Nor, for Matters of an ordinary Nature, which belonged to the Courts of Common Law. 4 *Inſt.* 63.

And now by the *St.* 16 *Car.* 10. This Court, and all the Juriſdiction exerciſed therein, are diſſolved, and taken away.

The Court of Requeſts

Is taken away by Statute. *Vide the St.* 16 *Car.* 1. 10. *Vide* 4 *Inſt.* 97.

The Court of Firſt-Fruits and Tenths.

Is taken away by the *St.* 1 *Mary* 10. 4 *Inſt.* 120.

The Court of Augmentations.

Is taken away by the *St.* 1 *Mary* 10. 4 *Inſt.* 122.

(L) The Court of Stannaries

(L. 1.) In what Caſes it has Juriſdiction.

BY Charters, one to the Tinners of *Cornwall*, and the other to the Tinners of *Devon*, made 10 *Ap.* 33 *Reg. Ed.* 1. and confirmed by Charter 8 *Ric.* 2. The King grants *quod omnes Stannatores dum operantur, &c. ſint quieti de Placitis Nativorum & omnibus Placitis & Querelis Curiam noſtram ſpectan', &c. ita quod non reſpondeant coram aliquibus Juſticiariis, &c. de aliquo Placito infra Stannarias prædictas emergen', exceptis Placitis Terræ, Vitæ, & Membrorum.* Pl. Com. 327. *b.* 4 *Inſt.* 232. *St.* 16 *Car.* 1. 15. *Vide Abatement*, (D. 7.) — *Waiſt*, (H. 2.)

Et quod Cuſtos Noſter vel ejus Locum tenens teneat omnia Placita inter Stannatores prædictos & inter ipſos & alios de omnibus Tranſgreſſionibus, Querelis, & Contractibus infra Stannarias illas emergen', &c. Pl. Com. 327. *b.*

By *St.* 50 *Ed.* 3. and by his Charter 6 *July* 50 *Ed.* 3. Upon Complaint of Grievances by Colour of the ſame Charters, Reſtraint was put to ſuch Grievances, *ſalvis Libertatibus & Privilegiis per Chart' prædict. conceſſis.* 4 *Inſt.* 233.

And therefore, the Warden of the Stannaries may hold a Court for Redreſs of all Treſpaſſes, Complaints, and Contracts between the Tinners working within the Stannaries, *&c.* and between them and others.

And this Privilege extends to all Blowers, Labourers, and Workers without Fraud in or about the Stannaries in *Cornwall* and *Devon*, during the Time they work there. *R. per all the J.* 4 *Jac.* 4 *Inſt.* 231.

So the Court of the Stannaries ſhall have Juriſdiction in all Matters, which concern or depend upon the Stannaries. *R.* 4 *Inſt.* 231.

So, in all tranſitory Actions between Tinner and Tinner, tho' the Cauſe be collateral, and does not relate to the Stannaries. *Ibid.*

So it may be in the Stanneries, tho' the Cauſe ariſes out of the Stannaries, where the Defendant lives within the Juriſdiction. *Ibid.*

So, between a Tinner and a Foreigner, if the Defendant does not plead to the Juriſdiction, and it does not appear upon the Proceedings to be out of the Juriſdiction. *Ibid.*

(L. 2.) In what not.

But by the *St.* 50 *Ed.* 3. The Court of Stannaries has Juriſdiction only *de operariis laborantibus in Stannariis illis, & non de aliis, aut alibi laborantibus.* 4 *Inſt.* 233.

Tho' he be Maſter to the Labourers within the Stannaries, or his other Servants. *Semb.* 4 *Inſt.* 233.

So by the *St.* 16 *Car.* 1. 15. in a Vill only, where ſome Tin-work is in Work, and ſhall be in Working.

So the Court of Stannaries has no Juriſdiction in any local Action, which ariſes out of the Stannaries; for Pleas of Land, Life, or Member are excepted out of the Charter, and therefore there muſt be Juſtice elſewhere. *R.* 4 *Inſt.* 231.

Nor, in a perſonal Action, which ariſes out of the Stannaries, if it be between a Tinner and another, and the Defendant will plead to the Juriſdiction, or it appears upon the Proceedings to be out of the Juriſdiction. *Ibid.*

So, if the Cauſe of Action, between a Tinner and a Tinner, ariſes out of the Stannaries, it may be brought elſewhere if the Plaintiff will. 4 *Inſt.* 231.

If the Plaintiff ſues in the Court of the Stannaries, where the Matter ariſes out of the Juriſdiction, the Defendant may tender a Plea to the Juriſdiction upon his Oath; and, if it be refuſed, he ſhall have a Prohibition. *Ibid.*

And he has Privilege, that he ſhall not be arreſted in any Place when he goes to make his Oath, *eundo, redeundo, aut morando.* *Ibid.*

So by the *St.* 16 *Car.* 1. 15. The Defendant ſhall be diſcharged, if he tender an Oath, that he is not, nor was a Tinner when the Suit commenced, unleſs the Plaintiff makes Oath, that *he* is a working Tinner without Fraud, and that his Suit aroſe within the Stannaries, or concerns Tin, or Tin-works.

So, if it appears, by the Plaintiff's own ſhewing, that the Cauſe of Action ariſes out of the Juriſdiction; the Proceeding there ſhall be void, tho' the Defendant did not plead to the Juriſdiction. *Ibid.*

Or, if it appears by the Condition of an Obligation, that a Thing was to be done out of the Juriſdiction. *Ibid.*

And in ſuch Caſe, if Execution be executed, Treſpaſs or Falſe Impriſonment lies. *Semb.* 4 *Inſt.* 231.

So by the *St.* 16 *Car.* 1. 15. An Action lies, if any not a Tinner, *&c.* ſue there, in which the Plaintiff ſhall recover 10 *l.* and his Damages and Coſts.

(L. 3.) How the Proceedings ſhall be.

The Court of Stannaries is held *coram Cuſtode Stannariæ, &c.* 4 *Inſt.* 229.

And ought to be guided by ſpecial Laws, allowed by Cuſtom or Preſcription. *Ibid.*

So

So a Demurrer there ought to be only for Matter of Subſtance, and not for Form. *R.* 4 *Inſt.* 231.

So Error does not lie upon a Judgment given there. 4 *Inſt.* 229. 1 *Rol.* 745. *l.* 20.

Nor a Writ of falſe Judgment. *R.* 4 *Inſt.* 230.

Neither can it be examined in *B. R. Chancery*, or other Court. *R.* 7 *Eliz.* 4 *Inſt.* 230.

But an Appeal lies, by Uſage, to the Steward of the Stannaries, and from him to the Under-Warden, and from him to the Warden of the Stannaries, and from him to the Prinee and his Council. *R.* 4 *Inſt.* 230. 1 *Rol.* 745. *l.* 20.

And, if there be no Prince, to the King in Council. 1 *Rol.* 745. *l.* 20.

(M) The Courts of the Univerſities.

BY the *St.* 13 *Eliz.* 29. the Univerſities of *Oxford* and *Cambridge* are ſeverally incorporated; and all former Letters Patent to them ſeverally granted, and all Manors, *&c.* Franchiſes, Privileges, *&c.* are confirmed. 4 *Inſt.* 227. *Vide Univerſity.*

And therefore, by Charter 14 *H.* 8. now confirmed by the ſame *St.* 13 *El.* the Univerſity of *Oxford* may hold Plea, before the Vice-Chancellor, in all Things perſonal, *ſecundum Legem Terræ, aut Morem Univerſitatis. Lit.* 10.

And in Treſpaſs by any Perſon, where a Scholar is Party. 1 *Sal.* 343.

Before the 14 *H.* 8. The Univerſity of *Oxford* had a Court-Leet. *Ibid.*

But an Univerſity, in their Court, cannot hold Plea for the Penalty of a Statute; and a Recovery there is no Bar in an Action at Common Law. *Skin.* 665.

[In the Chancellor of *Oxford*'s Court, the Plaintiff, to obtain a Warrant to arreſt Defendant, muſt ſwear he has a perſonal Action againſt him, and that he *believes* he will run away: to ſwear *of and upon the Truth* of the Premiſſes, and that he *ſuſpects* he will run away, is not ſufficient. *Smith* v. *Dr. Bouchier*, *M.* 8 *G.* 2. *Str.* 993. *B. R. H.* 62.]

(N. 1.) The Eccleſiaſtical Courts.

AS to the Original of the Eccleſiaſtical Juriſdiction, *Vide Prærogative*, (D. 9, &c.)

As to the Court of Convocation, *Vide Convocation.*

The Court of High Commiſſion is now taken away by the *St.* 16 *Car.* 1, 11. —*Vide* for this, *Prærogative*, (D. 17.)

The Courts of the Archbiſhop are, 1. The *Prerogative*-Court. 2. The Court of *Arches*. 3. The Court of *Audience*. 4. The Court of *Faculties*.

[No Proceedings in the Eccleſiaſtical Courts of this Kingdom are Records, but only Evidence of Sentences in their Courts, and the Officers ſhould not take upon them to intitle them *Recorda Dom. Reg. Colegave* v. *Juſon*, *M.* 1744. 3 *Atkyns* 197.]

(N. 2.) The Prerogative Court.

The Prerogative Court, is the Court where the Archbiſhop grants Adminiſtration, or makes Probate of the Teſtaments of All having *Bona Notabilia* within his Province. 4 *Inſt.* 335. *Vide Adminiſtrator*, (B. 3, &c.)

Or repeals a Probate, or Adminiſtration, granted by Surprize.

A Sentence by an Eccleſiaſtical Judge, in a Spiritual Cauſe, ſhall be allowed as conſonant to the Eccleſiaſtical Law, by the Temporal Judges. 2 *Rol.* 219. *l.* 20. 5. *Co.* 7. *Caudrey's Caſe, of the King's Eccleſiaſtical Law.*

And therefore a Certificate, *&c.* of ſuch Sentence need not mention the Cauſe of it; as, if it certifies a Deprivation of an Eccleſiaſtical Perſon, it need not expreſs the Cauſe of the Deprivation. 2 *Rol.* 219. *l.* 30.

So it is ſufficient if a Sentence be found in a ſpecial Verdict, without mentioning the Cauſe. *Ibid.*

So a Proceſs in the Name, and under the Seal of a Biſhop, &c. ſhall be good. *R.* 12 *Co.* 7. *Vide Prærogative*, (D. 17.)

(N. 3.) The Arches.

The Court of *Arches* has ordinary Juriſdiction in *Bow* and twelve other Pariſhes in *London*, for Eccleſiaſtical Cauſes there ariſing. 4 *Inſt.* 337.

So it has Juriſdiction upon Appeal, in all Cauſes within the Province of *Canterbury*. *Ibid.*

The Dean of the Arches is the Judge in this Court. *Ibid.*

And may hear Cauſes, at the Inſtance of Parties, or *ex Officio*.

And act as Deputy to the Archbiſhop, and by his Authority. *Skin.* 290.

But a Suit ought not to be in the Arches, where the Archbiſhop himſelf is a Party; for tho' another ſits as Judge there, the Archbiſhop may ſit there if he pleaſes. 2 *Sho.* 146.

Tho' the Archbiſhop ſues only as a Truſtee; for he ought to have a Commiſſion of Delegates originally. *Ibid.*

So an Appeal does not lie from the Dean to the Archbiſhop. *Skin.* 290.

(N. 4. The Audience.

The Court of *Audience* is held in the Archbiſhop's Palace, before his Vicar-General in Spirituals.

The Juriſdiction does not relate to Cauſes between Party and Party, but to Matters *pro formâ*. 4 *Inſt.* 337.

As, the Conſecration and Confirmation of Biſhops elected. *Ibid.*

Admiſſion and Inſtitution to Benefices. *Ibid.*

Diſpenſations. *Ibid.*

The Grant or Appointment of a Guardian of the Spiritualties *Sede vacante*. *Ibid.*

And by himſelf, or his Commiſſary, he may exerciſe all Eccleſiaſtical Juriſdiction *in qualibet Dioceſi, Sede vacante*; and make Inſtitutions and Viſitations in ſuch Dioceſe, as the Biſhop himſelf when the See is full.

(N. 5.) The Court of Faculties.

So the Archbiſhop has a Court of Faculties, which does not hold Plea in Suits, but there the Archbiſhop, or his Official, Maſter of the Faculties, grants Diſpenſations in Caſes allowed by the *St.* 25 *H.* 8. 21. *viz.* for any ſuch Matter whereof Diſpenſations, &c. were accuſtomed to be by Authority of the See of *Rome*.

By the *St.* 25 *H.* 8. 21. The Archbiſhop by himſelf, Commiſſary, or Deputy, may grant by Inſtrument under his Name and Seal, all Licences, Diſpenſations, Faculties, Compoſitions, Delegacies, Reſcripts, or other Writing, for any ſuch Cauſe, whereof ſuch Licences, &c. were accuſtomed to be had at the See of *Rome*, &c.

The Archbiſhop may conſtitute a Clerk to write and regiſter ſuch Licences, &c.

And this Court has Authority to grant ſuch Diſpenſations and Faculties, by the Maſter of the Faculties. 4 *Inſt.* 337.

As a Faculty to be a Doctor, Batchelor of Arts, &c. *Semb.* 2 *Mod. Ca.* 364.

And if it be ſubſcribed by a Deputy, and not by the Chief Clerk of the Faculties, and afterwards regiſtered and inrolled, it is ſufficient. 2 *Mod. Ca.* 364.

And this Court may grant a Diſpenſation for Marriage, Plurality, accepting a Benefice where his Father was Incumbent, &c. 4 *Inſt.* 337.

By the *St.* 5 *El.* 5. The Archbiſhop, Biſhop, &c. are allowed to grant Licence to eat Fleſh in *Lent*, &c. (*Vide* 4 *Inſt.* 337.)

(N. 6.) The Conſiſtory-Court.

Every Biſhop has his Conſiſtory-Court, held before his Chancellor or his Commiſſary, for all Eccleſiaſtical Cauſes within his Dioceſe. 4 *Inſt.* 338.

The

The Conſiſtory-Court ſeems to be erected after the Time of *H.* 1. but upon the Ground of a Charter by *W.* 1. to the Biſhop of *Lincoln.* 4 *Inſt.* 259, 260. *Cod. J. Eccl.* 1009. *Seld. of Tithes, ch.* 14. *ſ.* 1.

(N. 7.) The Manner of Proceeding.

Omnes Cauſæ in Foro Eccleſiaſtico movent ex Officio, vel ad Inſtantiam partis.

Cauſæ ex Officio ſunt pro Crimine commiſſo, vel ſuſpecto, & ſunt ex Officio mero, vel promoto.

Cauſes *ex mero Officio* are, where the Judge proceeds againſt the Criminal upon Requeſt, or Accuſation, or Detection by another;

Ex Officio promoto, where another brings the Accuſation, and proſecutes the Cauſe.

(N. 8.) Cenſures and Appeals.

As to Eccleſiaſtical Cenſures, *Vide Prærogative,* (D. 12.)

As to Appeals, *Vide Prærogative,* (D. 13, &c.)

(N. 9.) The Court of the Archdeacon.

So, by Preſcription, or Compoſition, the Archdeacon has a Court, in what Place he pleaſes, for Cauſes Eccleſiaſtical within his Archdeaconry. 4 *Inſt.* 339. 2 *Rol.* 150. 37 *H.* 6. 28. *a. Vide Eccleſiaſtical Perſons,* (C. 5.)

And ſhall make a Regiſter of his Court. 2 *Vent.* 269.

The Courts of Law take Notice of his Juriſdiction. 2 *Rol.* 150. 2 *Vent.* 269.

Vide more concerning Eccleſiaſtical Courts in *Diſmes,* (M. 1, &c.)—*Prohibition.*

(O) The Courts of London.

(O. 1.) The Huſtings.

IN *London* there are, the Courts of Huſtings, of the Mayor, of the Sheriffs, of the Chamberlain, of Aldermen, of Common-Council, the Wardmote, Court of Conſervancy, and Court of Conſcience.

The Court of *Huſtings* is the moſt antient and eminent Court within *London.* 4 *Inſt.* 247. 2 *Inſt.* 322.

And is held before the Mayor and Sheriffs, of all Pleas Real, Mixt, and Perſonal. 4 *Inſt.* 247.

By Cuſtom, the City of *London* ſhall hold Plea of Lands within the City, by Writ of Right Patent, or by other Writs of the King. *F. N. B.* 6, 7.

And therefore, when the Suit is by Right Patent, he ſhall not ſue in Nature of ſuch a Writ as he pleaſes at Common Law, as he ſhall do, when he ſues a Writ of Right Cloſe in *Antient Demeſne. F. N. B.* 7. *A.*

By Charters of *H.* 1. & *H.* 3. The Huſtings ſhall be held once a Week. 2 *Inſt.* 327. (*Vide Priv. Lond.* 4, 10.)

And therefore, the Huſtings is held in one Week for Pleas of Land, or Actions Real, and the next for common Pleas; for they are diſtinct. (*Vide Priv. Lond.* 160.)

After Delivery of the Writ, three Summonſes go againſt the Tenant, returnable at the next Huſtings, and an Eſſoign upon each at the next Huſtings; and if he does not appear after the third Summons and third Eſſoign, Proceſs ſhall be by *Grand* or *Petit Cape,* as at the Common Law. (*Vide Priv. Lond.* 161.)

If the Tenant appears, the Demandant counts, and proceeds as at Common Law. (*Vide Priv. Lond.* 161.)

And, by Cuſtom, the Tenant ſhall have an Eſſoign after every Appearance, and after the View. *Ibid.*

In the Huſtings for Common Pleas, the Plaintiff ſhall ſue a Writ *ex gravi Querela*, a Writ of Dower *unde nihil habet*, a Writ of *Gavalet*, of Waſte, of Partition, *Quid juris clamat*, &c. 2 *Inſt.* 299. *Vide Waſte*, (B. 1, 2.) (*Vide Priv. Lond.* 164, &c.)

So, a Writ of Error upon a Judgment in the Sheriff's Court. *Vide Poſt*, (O. 4.) (*Vide Priv. Lond.* 164, 168.)

But, by the Cuſtom of *London*, Judgment of Outlawry in the Huſtings in *London* ſhall be given by the Recorder, not by the Mayor, tho' he be Coroner, or his Deputy, as in other Counties. 4 *Inſt.* 247.

(O. 2.) If there be a Foreign Vouchee. *Vide Voucher*, (H.)

If the Defendant in the Huſtings had vouched in a foreign County, by the Common Law the Plea was put without Day, and the Record ought to be removed to *C. B.* 2 *Inſt.* 324.

But now by the *St. Gloc.* 12 There ſhall be a Summons *ad Warrantizandum* returnable in *C. B.* and a Writ to the Mayor and Bailiffs, to ſurceaſe until the Plea be determined in *C. B.* and then the Warrantor ſhall anſwer to the chief Plea, and if the Demandant recovers, the Tenant ſhall have a Writ from *C. B.* to the Mayor to extend the Land, and to return the Extent into *C. B.* and afterwards ſhall have a Writ to the Sheriff of the County where the Vouchee was ſummoned, to have of the Land of the Warrantor to the Value. 2 *Inſt.* 324. *Vide Voucher*, (H.)

(O. 3.) The Mayor's Court.

The Mayor's Court is a Court of Record, held before the Mayor and Aldermen, for all Actions ariſing within the Liberties of *London*; in which the Recorder is Judge, but the Mayor and Aldermen may join with him, when they pleaſe. (*Vide Priv. Lond.* 186.)

So, in this Court, all Matters of Equity within *London* may be determined upon Bill and Anſwer, upon which the Recorder alſo is Judge. *Vide Poſt*, (O. 5.) (*Vide Priv. Lond.* 256.)

(O. 4.) The Sheriff's Courts.

Each Sheriff of *London* has a Court of Record held before him. (*Vide Priv. Lond.* 264.)

And upon a Plaint entred there, any Serjeant of Mace may arreſt the Defendant upon a Precept *ore tenus*, till he finds Bail. (*Vide Priv. Lond.* 271, 272, 277.)

Tho' the Entry be only in the Porter's Book, before an Entry in Court. (*Vide Priv. Lond.* 277.)

And tho' Bail be tendered to the Sheriff, the Serjeant is not bound to diſcharge him till Notice from the Sheriff.

If Error be of a Judgment in the Sheriff's Court, it ſhall be before the Mayor and Sheriffs in the Huſtings. 4 *Inſt.* 248. (*Vide Priv. Lond.* 164, 168.)

(O. 5.) The Court of Equity in *London*.

By the Cuſtom of *London*, if a Man be impleaded before the Sheriffs, upon a Suggeſtion the Mayor may bring the Parties and Record before him, and examine them upon their Pleas; and if he finds that the Plaintiff is ſatisfied, order that the Plaintiff be barred. 4 *Inſt.* 248. (*Vide Priv. Lond.* 275.)

But by the Cuſtom, the Mayor cannot examine the Parties after Judgment. 4 *Inſt.* 248. *R. Godb.* 127.

(*Vide Priv. Lond.* 256, 275, 398, &c.) *Vide Ante*, (O. 3.)

(O. 6.) The Wardmote.

The Court of *Ward-mote* is held for every Ward in the City: for each Ward is of the Nature of an Hundred in a County. 4 *Inſt.* 249. (*Vide Priv. Lond.* 355.)

By Inquiſition of twelve Men, the Wardmote inquires of Defaults in paving the Streets, *&c.* 4 *Inſt.* 249.)

(O. 7.) Folk-mote.

The Court of *Folk-mote* or *Hall-mote* is *Conventus in Aulâ Publicâ* of each Company in the City. 4 *Inſt.* 249.

(*Vide Priv. Lond.* 408.)

(O. 8.) The Tower-Court.

By Preſcription, a Court is held within the *Tower*, for Debt, and other Perſonal Actions. 4 *Inſt.* 251. (*Vide Priv. Lond.* 409.)

So by Charter of *H.* 1. The Citizens of *London* may place whom they will of themſelves, for keeping the Pleas of the Crown, and no other ſhall be Juſtices over the Men of *London*.

(O. 9.) The Court of Requeſts.

[By *Stat.* 14 *G.* 2. *c.* 10. all Debts under 40 *s.* may be recovered in the Court of Requeſts thereby eſtabliſhed; concerning which various Regulations are laid down.]

The Court of Aldermen.

Vide London, (D.—*Vide* 4 *Inſt.* 248. *Vide Priv. Lond.* 353.

The Court of the Chamberlain, and of the Chamberlain and Orphans.

Vide Guardian, (G. 1, &c.)—*London*, (I.—N. 2.)—*Vide* 4 *Inſt.* 248, 250. *Vide Priv. Lond.* 279, &c. 302, &c.

The Court of Common-Council.

Vide London, (F.)—*Vide* 4 *Inſt.* 249. *Vide Priv. Lond.* 350, &c.

The Court of Conſervancy.

Vide London, (B.)—*Vide* 4 *Inſt.* 250. *Vide Priv. Lond.* 364, *&c.*

The Court of the Coroner.

Vide Officer, (G. 5, &c.)—*Vide* 4 *Inſt.* 250. *Vide Priv. Lond.* 408.

The Court of the Eſcheator.

Vide Eſcheat, (C.)—*Vide* 4 *Inſt.* 250. *Vide Priv. Lond.* 408.

The Court of Watermen.

Vide Priv. Lond. 387, *&c.*

The

The Court of St. Martin's le Grand.

Vide Priv. Lond. 409.

Vide Diſmes, (M. 6, 7.)

(P) Courts in other Cities, Boroughs, &c.

(P. 1.) Grant *tenere Placita.*

SO, by Grant, or Preſcription, every other City, or Borough may have Courts for Matters within their Precincts.

In every Caſe, where Power is given to any, to hear and determine, they have judicial Authority, and act as Judges. 1 *Sal.* 200.

And if Authority be given to fine and impriſon, it ſhall be a Court of Record. *R.* 1 *Sal.* 200, 396.

A Grant *Tenere Placita,* gives Juriſdiction, but not excluſive of other Courts. *Hard.* 509. If there be no negative Words. *Pal.* 456.

And upon ſuch a Grant, the Grantee may make a Judge; but when made, he is the King's Juſtice. 20 *H.* 7. 6. *a.*

But a Court cannot hold Plea of Freehold, upon a Plaint, without Writ: tho' a Cuſtom for it be alledged. *R.* 2 *Lev.* 98, 123.

So a Court, which does not proceed according to the Common Law, cannot be eſtabliſhed by the King's Charter, without an Act of Parliament, or Preſcription. 2 *Vent.* 33, 4. *Vide Chancery,* (A. 3.)—*Prærogative,* (D. 28.)

(P. 2.) Conuſance of Pleas.

Vide Univerſity.

So the King may grant Conuſance of Pleas; by which the Grantee ſhall have Conuſance of all Pleas commenced in other Courts out of ſuch Precinct. *Hard.* 509. *Pal.* 456.

And a Grant of Conuſance of all *Actions,* is the ſame as of all *Pleas.* 1 *Rol.* 489. *l.* 52.

So the Grant ſhall be allowed, tho' the Action be laid in *London,* or in another County; for it ſhall be commenced *de novo. R. Hard.* 509.

Tho' the Suit be by *Quo Minus*; for this does not exclude Conuſance, where there are the Words, *licet tangat nos. R. Hard.* 509.

So an antient Grant *de curia Regali,* or *omni Regiâ poteſtate,* is ſufficient, if Conuſance upon it has been allowed. 1 *Rol.* 491. *l.* 10.

So ſuch antient Grant is ſufficient, tho' no Judge be named, where the Bailiff of the Grantee has always uſed Conuſance. 1 *Rol.* 491. *l.* 10, 15, 27.

A Grant of Conuſance of all Pleas extends to an Aſſiſe, *&c.* if Conuſance of it has been uſed upon an antient Grant. 1 *Rol.* 490. *l.* 20, 23. 14 *H.* 6. 12. *a.*

A Grant of Conuſance *in quibuſcunque Curiis,* extends to *B. R.* and *C. B.* 1 *Rol.* 490. *l.* 2. *Semb. Pal.* 456.—So, to the *Chancery,* and *Exchequer. R. Hard.* 509.

A Grant where a Scholar or *Perſona privilegiata* is ſued, extends where the College or Corporation is ſued. *R.* 1 *Mod.* 164.

And ſhall be allowed in the *Exchequer,* or *B. R.* tho' the Suit there be by Bill, which imports Privilege. *R.* 6 *H.* 7. 9. *b.*

(P. 3.) When it ſhall not be allowed.

But Conuſance cannot be claimed by Preſcription. *Co. L.* 114. 1 *Sal.* 183.

And a Grant of it will be bad, generally, if it be not ſaid before what Judge. 1 *Rol.* 491. *l.* 5, 20.

Unleſs where it is implied, before whom; as, if a Grant be of Conuſance within his Court; for the Judge of the Court ſhall have it. 1 *Rol.* 419. *l.* 17.

So

So a Grant before the Bailiff, Steward, &c. of the Grantee is void, where he has no ſuch Officer. 1 *Rol*, 491. *l*. 25. 1 *H*. 4. 5. *a*.

So a Grant of Conuſance in all Pleas, does not extend to Felony or Appeal. 1 *Rol*. 489. *l*. 55.

Nor, to an Aſſiſe, unleſs it be named, for it is a Plaint. 1 *Rol*. 490. *l*. 15, 20. 14 *H*. 6. 12. *a*.

So a Grant of Conuſance in Covenant does not extend to a Fine upon a Writ of Covenant. 1 *Rol*. 490. *l*. 50.

So Conuſance of Pleas *coram quibuſcunque Juſticiariis* does not extend to the Juſtices of *B. R.* or *C. B.* if they be not named. 1 *Rol*. 490. *l*. 5.

So Conuſance of Pleas ſhall not be allowed, where the inferior Court cannot do Right; as, in *Replevin*; for it cannot grant a Re-ſummons, or ſecond Deliverance. 2 *Inſt*. 140. 1 *Rol*. 489. *l*. 30. *F,g*. 153, 295.

Or, a *Quare Impedit*: For the inferior Court cannot write to the Biſhop. *Co. L*. 134. *b*.

Nor, where an Interpleader is neceſſary: For it cannot allow it. 1 *Rol*. 493. *l*. 20.

Nor, in a Fine, or *Scire facias* upon it. 1 *Rol*. 490. *l*. 13. 492. *l*. 40.

Nor, in an Action founded upon a Statute made ſince the Conuſance granted. 1 *Rol*. 490. *l*. 30.

Nor, in an Attaint; for, by the *St*. 23 *H*. 8. 3. it ſhall be brought in *B. R.* or *C. B*. *Co. L*. 294. *b*. *Dy*. 202. *b*.

So it ſhall not be allowed, if the Grantee be Party. 1 *Rol*. 491. *H*. 492. *l*. 15. *Semb. Cont. Dy*. 157. *a*.

Tho' the Grant be, *licet ipſe ſit pars*. 1 *Rol*. 492. *l*. 20, 30.

Otherwiſe, where the Plea is held before the Steward of the Grantee. 1 *Rol*. 492. *l*. 5, 25. *Dy*. 157. *a*.

So it ſhall not be allowed in a tranſitory Action alledged out of the Juriſdiction. *R*. 1 *Sid*. 103.

Or, where the Defendant is a Foreigner; or where one of the Defendants is ſo, if he cannot be ſevered. 1 *Rol*. 493. *l*. 50. 494. *l*. 2, 5.

Or, pleads Privilege; as, an Attorney, &c. *R*. 1 *Rol*. 489. *C. Dy*. 287. *a. in Marg. R. Lit*. 304.

Or, is *in Cuſtodia Mar'*. *Semb*. 6 *H*. 7. 9. *b*.

If he be ſued as a Truſtee, or for other Matter of Equity in *Chancery*, or the *Exchequer*. *R. Hard*. 189. *R*. 2 *Vent*. 362. *Vide Chancery*, (3 X.)

When, and how demanded.

Conuſance ought to be demanded by the Lord, and not pleaded to the Juriſdiction. *Semb*. 1 *Lev*. 89. *Bro. Juriſdiction* 92.

And it ſhall be demanded the firſt Day, at the Return of the Original, where the Place appears by the Writ; as, in Treſpaſs *quare Clauſum fregit*, &c. 1 *Rol*. 494. *M*.

In Debt, &c. if the Franchiſe be a County by itſelf. 1 *Rol*. 495. *l*. 10. *R*. 3 *H*. 6. 30. *b*.

If the Place does not appear by the Writ, as generally in Debt, *Detinue*, &c. it ought to be at the Day of the Count. 3 *H*. 6. 31. *a*. 1 *Rol*. 494. *l*. 55. 495. *l*. 5. *R*. 9 *H*. 7. 10. *b*. 16 *H*. 7. 16.

It ought to be demanded by the Lord himſelf, or his Attorney. 1 *Sal*. 183. 6 *H*. 7. 10. *a*.

So, by the Chancellor of the Univerſity, the Steward of *Ely*, &c. *Dy*. 157. *a*. 1 *Mod*. 163.

By the Vice-Chancellor, or his Attorney. *R. Hard*. 510.

And he ought to ſhew the Charter itſelf, or an Allowance in *Eyre*. 3 *H*. 6. 30. *b*. 1 *Sid*. 103. 1 *Lev*. 89. 1 *Sal*. 183. *Pal*. 456.

And if it be an Attorney, his Letter of Attorney in *Latin*. 1 *Sid*. 103. *Sho*. 352. 1 *Sal*. 183.

And he ought to continue his Demand at every Return of Proceſs. 1 *Rol*. 495. *l*. 31.

And it is ſufficient to ſhew Uſage in a ſingle Inſtance. 1 *Sal*. 183.

[If an Univerſity claim Conuſance, the Claim muſt be entered upon a Roll, the Certificate of the Chancellor that the Parties are of the Univerſity, and an Affidavit to verify the Certificate muſt be produced. *Paternoſter* v. *Graham*, *T.* 2 *G.* 2. *Str.* 810.]

[But a Demand comes too late after Plea pleaded, and Replication tendering Iſſue. *Barnes* 346.]

So after an Imparlance, or an Inqueſt awarded by Default. 1 *Rol.* 489. *A.* 492. *l.* 50. 493. *l.* 10. 494. *l.* 45. 495. *l.* 17. 6 *H.* 7. 10. *a.* *R.* 1 *Sid.* 103. 1 *Lev.* 89. *Sho.* 352.

Or, at the Return of the *Capias* or Exigent, where the Place appears by the Writ. 1 *Rol.* 492. *l.* 45. 495. *l.* 12.

Yet it cannot be allowed, till the Writ ſerved, and all the Defendants appear. 1 *Rol.* 495. *l.* 27, 40 *ad* 45.

(P. 4.) Incidents to Courts.

If the King grants to a Borough, *&c.* Power *tenere Placita*, it ſhall have all Incidents, tho' not mentioned in the Charter: As, it ſhall have Officers, a Serjeant, Bailiff, *&c.* to return Juries, execute Proceſs, *&c.* *R.* 1 *Rol.* 526. *l.* 30.

So, if it be erected by Act of Parliament: And ſhall have Power to continue their Proceſs, as incident. *R.* 1 *Sal.* 408.

So it ſhall have Proceſs. *Vide Poſt*, (P. 8.)

But it ſhall not have Power, as incident, to award a Writ of Inquiry to a Bailiff: For it may be executed in Court. *R.* 1 *Rol.* 526. *l.* 35.

(P. 5.) Juriſdiction.

(P. 5.) In Actions Real.

The Juriſdiction of inferior Courts in a City, Borough, *&c.* extends to all Actions, Real or Perſonal, which by Grant or Preſcription are allowed to them.

A Writ of *Right Patent* lies for a Tenant in Fee, directed to the Mayor and Sheriffs in *London*, or to Bailiffs, *&c.* commanding them to do Right to the Demandant againſt the Tenant for ſuch Tenements. *Reg.* 2. *b.* *F. N. B. b.* *C. D.* *Vide Droit*, (B. 1, &c.)

And in this he does not make Proteſtation to ſue in the Nature of ſuch a Writ as he pleaſes, as in a Writ of Right Cloſe, but muſt ſue ſuch Writ as his Caſe requires. *F. N. B.* 7. *A.*

And therefore, as *Right Patent* lies for Tenant in Fee, ſo a ſpecial Writ lies to the Mayor and Sheriffs, or to Bailiffs, *&c.* to do Juſtice to the Heir in Tail, for Lands deviſed, *&c.* to him. *Reg.* 244. *b.* *F. N. B.* 7. *A.*

Or, to him in Reverſion, or in Remainder. *Reg.* 245. *a.*

So, to Tenant in Dower. *Reg.* 170. *b.* *F. N. B.* 7. *A.*

So, ſince the *St. Gloc.* 6 *Ed.* 1. 11. if any one impleaded loſe by Colluſion, to make a Termor loſe his Term. *Reg.* 179. *a.* 2 *Inſt.* 323.

So, upon the *St. Glo.* 13. if a Tenant does Waſte or Eſtrepement. 2 *Inſt.* 328. *Reg.* 77. *b.*

So, to make Partition. *Reg.* 76. *b.* *F. N. B.* 6 *G.*

[If a Sheriff is impowered by private Act of Parliament to take Inquiſition of the Value of Lands giving Notice to the Owners, the Notice muſt appear on the Inquiſition, otherwiſe the Juriſdiction does not appear; and on *Certiorari* all will be quaſhed. *R.* v. *Mayor of Liverpool*, *T.* 8 *G.* 3. 4 *B. M.* 2244.]

(P. 6.) Actions Perſonal.

So in Perſonal Actions an inferior Court may hold Plea by Charter, or Preſcription.

The Stile of the Court.

And the Stile of the Court ought to ſhew by what Authority the Court was held. *R.* 8 *Co.* 133. *a.* *R.* 1 *Cro.* 489. *Mo.* 422. *Ow.* 50. 1 *Rol.* 795. *l.* 38. *Noy* 35. *R.* 2 *Cro.* 184, 493, 532. *R. Yel.* 46. *R.* 1 *Sid.* 311. *R. Jon.* 451.

So every Officer who juſtifies under the Authority of the Court, ought to ſhew it; as, a Steward, Bailiff, *&c.* *R. Cro. Car.* 46. *Adm. Mod. Ca.* 72.

[If the Stile of the Court is, *according to the Cuſtom whereof, &c.* it is not neceſſary to ſhew that the Steward may appoint an Under-ſteward, or that he was appointed in Writing. *Blenkinſon* v. *Iles*, *M.* 2 *G.* 2. *Ld. Raym.* 1543.]

But where the Stile of the Court is not conformable to the uſual Courts, it ſhall be aided by Intendment: As if, in the Stile of a Court *Pedis pulveriſati*, it be alledged, that it is held by Preſcription; it ſhall not be intended of a Court of Pipowder, which cannot be by Preſcription, but of another Cuſtomary Court under that Denomination. 1 *Sal.* 265.

So, if the Stile alledges the Court to be *ſecundum Legem Mercatoriam*, where it does not appear to be *Curia Stapulæ*; it ſhall be intended of ſome other Court under that Denomination. *R.* 1 *Sal.* 265. *Mod. Ca.* 61.

(P. 7.) The Plaint.

In theſe Courts the Plaint is in the Nature of an Original in *C. B.* 1 *Sal.* 266.

[If the Plaint is, *of a Plea of Treſpaſs*, generally; it is good, without adding, *with Force and Arms*. *Blenkinſon* v. *Iles*, *M.* 2 *G.* 2. *Ld. Raym.* 1543.]

(P. 8.) The Proceſs.

If the King grants Conuſance of Pleas, the Grantee ſhall have Power to make Proceſs by *Petit Cape*, Proceſs upon *Voucher*, or other Proceſs, as incident; tho' no Mention of it in the Grant. 1 *Rol.* 490. *l.* 45.

And he ſhall make Proceſs by *Capias*, where other Juſtices make it. 1 *Rol.* 495. *l.* 50.

And by Grand Diſtreſs, where the Caſe requires. 1 *Rol.* 495. *l.* 51.

And if the Defendant be convicted, he ſhall be fined, impriſoned, or amerced, as the Caſe requires. 1 *Rol.* 495. *l.* 55.

So, by Cuſtom, Goods taken upon Grand Diſtreſs, if it be returned *quod nihil habet ulterius*, may be delivered to the Plaintiff, for his Debt if he recovers, upon Security to re-deliver them if he does not obtain Judgment. 1 *Rol.* 564. *l.* 4.

But a *Capias* ought to be after a Summons or Attachment, not the firſt Proceſs. *Yel.* 158. *R.* 2 *Cro.* 261.

And if it be, it ſhall be Error, and not aided, as the Want of an Original by the *St.* 18 *El.* *R.* 2 *Cro.* 222, 261. *Yel.* 158.

[But the Irregularity of a *Capias* iſſuing for the firſt Proceſs is aided by Defendant's Appearance. *Blenkinſon* v. *Iles*, *M.* 2 *G.* 2. *Ld. Raym.* 1543]

So a Cuſtom, that a *Capias* be awarded before Summons, will be void. *R.* 1 *Rol.* 563. *l.* 20.

So, a Cuſtom, in the *Capias* againſt the Principal, to have a Clauſe, if he be not found to take the Bail. *R.* 1 *Rol.* 563. *l.* 44.

So a Cuſtom to take the Bail in Execution upon a Return of *Non eſt inventus*, upon a *Capias* againſt the Principal, without a *Scire facias*, is void. *R.* 1 *Rol.* 563. *l.* 35, 45.

So, generally, the Proceſs ought to be returnable at a Day certain; for *ad proximam Curiam* is not ſufficient. *R.* 2 *Cro.* 314. 2 *Bul.* 36.

(P. 9.) The Declaration.

By the *St.* 36 *Ed.* 3. 15. All Pleas in the Courts of the King, or others, ſhall be in *Latin*. *

And therefore, in a Declaration, if the Day or Year be in *Engliſh* Figures, it is Error. *R.* 1 *Sid.* 40. 2 *Lev.* 102.

Otherwiſe, in numeral Letters, which are *Latin* Figures. *R.* 2 *Lev.* 102.

Or if the Time be well deſcribed by the Year of the King, the Addition of the *A. D.* in Figures ſhall be rejected. *R.* 1 *Sal.* 195.

So an Uſage to write in *Engliſh*, does not aid. *R. Cro. El.* 85, 185.

* (*Vide the St.* 4 *G.* 2, 26. & 5 *G.* 2. 27. that all Proceedings in Courts of Juſtice are to be in *Engliſh*.

By

By the *St.* 8 *El.* 2. In Courts of *London* or Corporations, where Continuances are *de die in diem*, the Plaintiff ſhall declare in three Days after Appearance, otherwiſe at the next Court, unleſs Time given by ſpecial Order of Court, or pay Coſts.

A Declaration *unde idem Q. per Att' ſuum quod cum, &c.* omitting, *dicit*, is Error. *R. Yel.* 103.

So, if the Cauſe of Action does not appear to be within the Juriſdiction of the Court, it is Error; as, if the whole Conſideration in *Aſſumpſit* does not appear to have been there: As, *Aſſumpſit*, for Wares ſold, without ſaying, *ibidem vendit'*. 1 *Sand.* 74. *R.* 1 *Vent.* 243. 1 *Sid.* 87. 1 *Lev.* 137. *R.* 2 *Jon.* 230. 2 *Lev.* 87.

[If it does not alledge that the Goods were ſold and delivered within the Juriſdiction, as well as that Defendant was indebted, and promiſed to pay within it, Judgment ſhall be reverſed on Writ of falſe Judgment. *Waldock* v. *Cooper*, *T.* 27 & 28 *G.* 2. 2 *Wilſ.* 16.

For Money lent, without ſaying, *ibidem mutuat'*. 1 *Vent.* 72.

For Nurſing, without ſaying, *ibidem nutrit'*. *Ray.* 75. 1 *Lev.* 96.

So, if the Action be for a Cloſe called *B.* without ſaying, that the Cloſe lies within the Juriſdiction.

Or, for Treſpaſs done there. *Noy* 129.

So, if an *Aſſumpſit* be for Fees as a Solicitor in *Chancery*; for the *Chancery* is not within the Juriſdiction. *R.* 1 *Vent.* 28.

Or, *quod non moleſtaret*, the Jeſuits, without ſaying, that the Jeſuits lived within the Juriſdiction. *R.* 1 *Sid.* 105.

Quod ſurſum redderet an Obligation, without ſaying, that it was within the Juriſdiction. 1 *Sid.* 105.

Quod iret de York *ad* A. or carry Goods from *York* to *A.* without ſaying, that *A.* is within the Juriſdiction. *R.* 1 *Rol.* 545. *l.* 35, 45. *Cro. Car.* 571.

That he would procure a Leaſe of a Houſe in *A.* without ſaying, that *A.* is within the Juriſdiction. *R.* 1 *Lev.* 50. 1 *Vent.* 2.

That he would pay when he returned to *A.* without ſuch Allegation. *R. Cro. Car.* 571. *Jon.* 451.

So, if one ſues an Heir upon an Obligation by his Anceſtor, without ſaying, that he has Aſſets there; tho' he ſays that the Obligation was made within the Juriſdiction. *R.* 1 *Rol.* 494. *l.* 35.

If one ſues for Slander within the Juriſdiction by which ſhe has loſt her Marriage, *&c.* without ſaying, that the Loſs (which is the Giſt of the Action) was there. *R.* 1 *Sid.* 85, 95. *Ray.* 63. 1 *Lev.* 69, 153.

But if an Action be, that he ſued *infra Juriſdictionem* in the Name of *A.* without his Conſent, *ratione cujus* others ſued him: it need not be ſaid, that the other Suits were *infra Juriſdictionem*; for the Suit in the Name of *A.* without Conſent, is the ſole Ground of the Action. *R. Jon.* 448.

So, if an Action be for Slander, *per quod* he loſt Cuſtomers *infra Juriſdictonem & alibi*. *R. Jon.* 450. *Mod. Ca.* 224.

In an Action upon the Caſe for abuſing a Horſe committed to his Care, by Riding, it need not be ſaid that he rode *infra Juriſdictionem*; for the Giſt of the Action is the Neglect. *B. Mod. Ca.* 224.

If in *Aſſumpſit* the Plaintiff ſays, that upon an Account for Debts *infra Juriſdictionem* the Defendant was indebted to him in ſo much, *viz.* for Value received, without ſaying *infra Juriſdictionem*. *F,g.* 44. 2 *Mod. Ca.* 77.

[If the Account is laid to be ſtated *infra Juridictionem*, it is not neceſſary to aver the *Items* to have ariſen there. *Emery* v. *Bartlett*, *H.* 2 *G.* 2. *Str.* 827. *Ld. Raym.* 1555.]

(P. 10.) Plea.

By Cuſtom, the Defendant in Debt, without denying the Debt, may pray *quod inquiratur de vero Debito ſecundum Conſuetudinem*, upon which the Plaintiff ſhall have Judgment for the Debt found. *R.* 1 *Rol.* 564. *l.* 25.

(P. 11.) Continuance.

After Appearance until Judgment, a Continuance ought to be entered from one Court to another. 1 *Rol.* 486. *l.* 10, 30, 45. *Vide Pleader*, (V. 1, &c. W. 1, &c.)

And therefore *Dies dats* to the Plaintiff, without a Day alſo to the Defendant, is Error. *R.* 1 *Rol.* 486. *l.* 30.

And the Court ſhall have a Power to make Continuances as incident. *R.* 1 *Sal.* 408. *Vide Ante*, (P. 4.)

But a Continuance by *Dies datus* is ſufficient, tho' it is not ſaid *dat' per Cur'*. *R.* 1 *Sal.* 265.

So a Continuance from one Court to another; tho' the Charter allows a Court from Week to Week, and it is adjourned to the ſecond Week, leaving a Week between, except where the Charter ſays, *non aliter*. *R.* 1 *Rol.* 526. *l.* 50.

Vide Amendment, (I.)

(P. 12.) Enqueſt.

The Trial in an Inferior Court ſhall be by an Inqueſt of twelve lawful Men.

And the Entry may be *quod venire fac'* 12, *&c. per quos*, *&c.* without entring it at large. *Ray.* 20.

So the *Venire* may be for twenty-four or twenty-three in an Inferior Court, if the Trial be by twelve of them.

[By *Stat.* 29 *G.* 2. *c.* 19. Judges of Courts of Record in Cities, Towns-corporate, Liberties and Franchiſes, may fine Juror not attending, from 20*s.* to 40*s.*

But a Trial by ſix only is not good; for a Cuſtom for it ſhall be void. *R.* 1 *Rol.* 564. *l.* 12.

So it cannot grant a *Tales*; for an Inferior Court is not within the *St.* 35 *H.* 8. 6. and a Cuſtom for it is void. *R.* 1 *Rol.* 563. *l.* 50.

But there may be a *Tales de Circumſtantibus* by Preſcription; and if there be added *ſecundum formam Statuti*, it ſhall be rejected. *R. F,g.* 274.

[It is not a good Cuſtom for an inferior Court to award a *Tales de Circumſtantibus*. *Ball* v. *Knight*, *M.* 6 *G.* 2. *Str.* 941.]

If the Jury do not agree, an Inferior Court may keep them without Eating, Drinking, or Fire; and adjourn the Court *toties quoties* till they are agreed. 1 *Sal.* 201.

A *Venire fac' coram Majore*, without ſaying, *hic*, or, *in Cur'*, is Error. *Per Twiſd.* 1 *Sid.* 77.

So, a *Ven' fac' xii per quos rei veritas ſcire poterit*, for *ſciri*. *R.* 2 *Lev.* 83.

So it is Error, if the Jury find the Defendant guilty, without ſaying, *ſuper Sacramentum ſuum*. *R. Hob.* 248.

If they find that the Plaintiff has 40*s.* Damage by the Non-performance of the Defendant's Promiſe; for they ought to ſay directly *quod aſſumpſit*. *R. Yel.* 77.

If the Entry be, *quod Juratores electi, triati, & jurati dicunt*, without ſaying, *ad veritatem dicend'*. *R.* 2 *Lev.* 83.

Vide Amendment, (P.)

(P. 13.) Judgment.

So the Judgment in an Inferior Court ought ſtrictly to purſue the legal Form; and therefore if it be *Ideo conſideratum eſt*, without ſaying, *per Curiam*, it will be Error. *R.* 1 *Sand.* 74. 1 *Sid.* 143, 147.

So, *Ideo videtur Curiæ*. *R. Yel.* 130. *Noy* 129.

Ideo liquet, or, *conceſſum eſt*. *Yel.* 130.

Ideo conſideratum eſt per Curiam, without ſaying *quia videtur Curiæ quod placitum eſt minus ſufficiens*. *R.* 1 *Sal.* 402.

So, if it be, *quod Querens nil capiat per Narrationem*, where it ought to be, *per querelam*. *R. Sho.* 400.

[If Judgment is that Plaintiff *ought to* recover, it is bad, and ſhall be reverſed on Writ of falſe Judgment: it ought to be, that *he do* recover. *Waldock* v. *Cooper*, *T.* 27 & 28 *G.* 2. 2 *Wilſ.* 16.]

So, if *pleg' in miſericordia* be omitted in a Judgment in *Replevin*. *Sho.* 400.

But in a *County Palatine*, *Ideo conſideratum eſt*, without ſaying, *per Curiam*, is ſufficient. *R.* 1 *Sand.* 74.

So, in an Inferior Court a Judgment *quod recuperet pro Damnis. &c.* is good, without ſaying, *pro Miſis & Cuſtagiis*; for *Damna* includes them. 2 *Cro.* 420.

So, *Quod recuperet pro Miſis & Cuſtagiis de Incremento*, without ſaying, *circa Sectam ſuam*. *Ray.* 20.

Vide Amendment, (R.)

(P. 14.) Writ of Inquiry.

After a Judgment by Default, *&c.* a Writ of Inquiry ſhall be executed.

And it ſhall be executed in Court, unleſs where the Charter allows it to be before the Bailiff, *&c.* *R.* 1 *Rol.* 526. *l.* 35.

And where the Charter allows it before the Bailiff, Serjeant, *&c.* it ſhall not be before the Mayor, who is the Judge of the Court. *R. Yel.* 69.

(P. 15.) The Remedy, if out of the Juriſdiction.

By the *St. W.* 1. 3 *Ed.* 1. 35. Of great Men and others, who attach, *&c.* others to anſwer before them of Treſpaſſes, Contracts, *&c.* done out of their Juriſdiction, it is provided, that they anſwer to the Perſon attached Damages double, *&c.*

And therefore, if any ſue in an Inferior Court for a Matter ariſing out of the Juriſdiction, an Action lies for double Damages upon that Statute. 2 *Inſt.* 230.

So a Prohibition goes to ſtay ſuch Suit. *F. N. B.* 45. *F.* 2 *Inſt.* 230. *Vide Prohibition*, (A. 1, 2.)

And ſuch Prohibition goes before the Action commenced. 2 *Inſt.* 230.

Or, after Declaration, before Plea in Bar or Imparlance, the Defendant may tender a Plea to the Juriſdiction, upon *Affidavit* of the Fact; and if it be refuſed, he ſhall have a Prohibition. *R.* 1 *Sid.* 464. 1 *Vent.* 88, 181. *R. Ray.* 189.

So, where an Imparlance is given with the Declaration of Courſe, he may, within two Days after the Declaration. *R.* 1 *Vent.* 333. *Per Powel*, *Lut.* 1571.

So, upon an *Affidavit* of the Fact, he may have a Prohibition without pleading to the Juriſdiction. *Per* 2 *J.* 1. *cont. Lut.* 1026.

Or, if a Plea to the Juriſdiction be prevented by Artifice. 2 *Mod.* 273.

So, if a Plea to the Juriſdiction be refuſed, he may have a Bill of Exceptions, and tender it to be ſealed; and thereby take Advantage of that Matter upon Error. *Semb. F. N. B.* 21. *N. D.* 1 *Vent.* 181.

And a Prohibition lies, after a Plea to the Juriſdiction refuſed, tho' the Matter be alledged to be within the Juriſdiction. *R.* 2 *Rol.* 317. *l.* 30.

In tranſitory, as well as real Actions.

Where the Defendant is attached by his Goods, or by his Body. *F. N. B.* 45. *F.*

So, if the Declaration does not alledge the Matter to be within the Juriſdiction, a Prohibition lies at any Time. 2 *Mod.* 273.

Or it may be redreſſed by Error. *R.* 2 *Cro.* 96.

So, if it appears to be out of the Juriſdiction, the Judgment is void, and *coram non Judice*. *R.* 1 *Rol.* 545. *l.* 30.

And if the Man or his Goods are taken upon it, Treſpaſs lies.

Or, if he eſcapes, no Action lies againſt the Officer for the Eſcape. *R.* 1 *Rol.* 545. *l.* 30, 809. *l.* 50.

So ſuch Judgment cannot be pleaded in Bar to another Action for the ſame Cauſe. *R.* 3 *Lev.* 234.

So,

So, where a Man ſues in an Inferior Juriſdiction, for a Matter which he knows to be out of the Juriſdiction, an Action on the Caſe lies againſt him. *Semb. cont. Lut.* 1569. *R.* 1 *Vent.* 369.

Or, if the Judge refuſes a Plea there, which he ought to receive. *Per Jones*, 2 *Rol.* 498.

But where the Matter is ſuppoſed within the Juriſdiction, and the Defendant does not plead to the Juriſdiction, but imparls, or pleads another Matter, by which he admits the Juriſdiction; he ſhall never afterwards have a Prohibition, tho' it be out of the Juriſdiction. *Adm.* 1 *Vent.* 88, 181. *R.* 2 *Mod.* 273. 1 *Mod.* 63, 81. 1 *Sal.* 202.

Nor, an Action upon the Statute for double Damages. 2 *Inſt.* 230.

Nor, Relief by Error. 1 *Vent.* 236. *Vide* 1 *Vent.* 369.

So an Officer ſhall be excuſed tho' it does not appear by the Proceſs to be within the Juriſdiction, and in Fact it be out of it; for it is ſufficient, that it be alledged in the Plaint, or Declaration. *R.* 2 *Mod.* 59, 195.

So an Action lies againſt the Officer for an Eſcape. *R.* 1 *Sal.* 202. *R. P.* 7 *Ann. inter Higginſon* and *Sheaf.* (*Reported Comyns's Rep.* 153.) *R. cont. per* 3 *J. Ellis acc.* 2 *Mod.* 30.

Tho' the Officer had Notice, that it aroſe out of the Juriſdiction. *Vide Comyns's Rep.* 153, 156.

So an Action on the Caſe does not lie againſt an Officer, who is not Conuſant. *R. Lut.* 1568.

Nor, againſt the Plaintiff in the Inferior Court. *R. Lut.* 1560, 1569, 1572. *Carth.* 190.

Tho' he knew, that the Cauſe of Action aroſe out of the Juriſdiction. *Semb. Lut.* 1569. *Vide ſupra.*

So, if a Prohibition, upon a Suggeſtion that it ariſes out of the Juriſdiction, goes to a Suit in an Inferior Court, a *Procedendo* ſhall be granted, if it appears to be within the Juriſdiction; as, if a Prohibition be to the Courts of *London*, for Slander of the Plaintiff in ſaying that ſhe is a Whore, a *Procedendo* ſhall be granted, upon *Affidavit* that the Speaking was in *London*, where ſuch Words are actionable, without a Return of the Cuſtom upon an *Habeas Corpus*. *Sho.* 131. 4 *Mod.* 367.

(P. 16.) Miſdemeanor in the Judge or Officers.

So for a Miſdemeanor in the Steward or Judge of an Inferior Court, an Attachment lies againſt him, as for a Contempt: As, if he gives Judgment where he himſelf is Party. 1 *Sal.* 201, 396.

If he grants a new Trial after Judgment and Coſts taxed. 1 *Sal.* 201.

If he grants an Attachment againſt all the Goods of the Party. *Ibid.*

If he refuſes a Return and Execution of a Writ of Error; tho' his Fees are not paid or tendred. *Lane* 16.

But a Man, who acts as a Judge, can never be queſtioned by Action or Indictment, for a Matter within his Juriſdiction, tho' he be miſtaken. *R.* 1 *Sal.* 396, 7. *Vide Action upon the Caſe for a Conſpiracy*, (B.)

So an Attachment does not go, where the Contempt is not manifeſt: As, if a Judgment be againſt *B.* and ſatisfied, and afterwards another Action between the ſame Parties, and a Writ of Error upon it delivered before Judgment, upon which the Steward returns the former Judgment. *Ray* 189.

(Q) The Courſe of the Court.

THE Courſe of the Court is the Law of the Court.

And the Judges will generally take Notice of the Courſe and Law of every Court.

As, upon a Writ of Error, the Court of *B. R.* will take Notice, what are the particular Laws and Cuſtoms of the Place where the Judgment was given, without a Return of them upon Record: As, that the Proceedings in *Berwick* are in *Engliſh*. *R.* 1 *Sal.* 269.

So, of the Form of Pleading, &c. in *C. B.* the Court of *B. R.* will take Notice: For it cannot be tried, if it ſhould be ſpecially aſſigned. *R.* 2 *R.* 3. 9. *b.*

[The Judge of an inferior Court cannot grant a new Trial; but for Matters of Irregularity, where the Proceedings are contrary to the Practice and Rules of the Court, he may ſet aſide the Judgment. *Semb. Bayly* v. *Boorne*, *M.* 7 *G. Str.* 392.]

[He may ſet aſide a Writ of Inquiry or Judgment, tho' ſtrictly regular, if obtained by Fraud or Surprize. *Rex* v. *Urling*, *M.* 4 *G. Fort.* 198.]

[He may ſet aſide a regular interlocutory Judgment, in order to let in the Trial of the Merits. *Rex* v *Peters*, *P.* 31 *G.* 2. 1 *B. M.* 568.]

[He may ſet aſide a Verdict, when after Notice of Trial a Reference is agreed to, and Plaintiff without new Notice goes to Trial. *Jewell* v. *Hill*, *H.* 8 *G. Str.* 499.]

[He may ſet aſide a Verdict, for Irregularity, but not upon the Merits. *Rex* v. *Peters*, *P.* 31 *G.* 2. 1 *B. M.* 568.]

In what Court Error ſhall be brought.

Vide Pleader, (3 B. 1, &c.)

In what Court a Suit for the King's Debt ſhall be brought.

Vide Dett, (G. 11.)

Suit of Court.

Vide Copyhold, (K. 13, &c.)

Erection of Courts.

Vide Prærogative, (D. 28.)

Proceedings in Courts, when Evidence.

Vide Evidence. (C. 1.)

For more concerning Courts, *Vide Abatement*, (D. 6.)—*Aſſiſe*. (B. 7.——*Audita Querela*, (E. 2.)—*Diſmes*, (M. 5, &c.)— *Execution*, (I. 1, &c.)—*Privilege*, (A. 1.—C. 1.—*Prohibition*.—*Quo Warranto*, (C. 1.)

CREDIT.

Bill of Credit.

Vide Merchant, (F. 3.)

CREDITOR.

Vide Bankrupt, (D. 3.)

CREEK.

Vide Navigation, (C.)

CROSS-

CROSS-REMAINDERS.

Vide Deviſe, (N. 14, 15.)

CROWN.

Vide Franchiſes, (G. 1.)—*Prærogative.*—*Roy*, (A. 1, 2.)—*Scotland*, (D. 2.)

Limitation of the Crown.

Vide Parliament, (H. 18, 19.)

Pleas of the Crown.

Vide Action, (D. 1.)—*Juſtices.*—*Juſtices of Peace.*

CUI ANTE DIVORTIUM.

Vide Dum fuit infra Ætatem, (G.)

CUI IN VITA.

Vide Baron and Feme, (I. 3.)

CUM PERTINENTIIS.

Vide Grant, (E. 9.)

CURIA CLAUDENDA.

Vide Droit, (M. 1, 2.)

CURSING AND SWEARING.

Vide Juſtices of Peace, (B. 23.)

CURTESY OF ENGLAND.

Vide Copyhold, (K. 1.)—*Eſtates*, (D. 1, 2.)—*Waſte*, (F. 2.)

CURTILAGE.

Vide Grant, (E. 7.)

CUSTOM.

Cuſtom.

Vide Chancery, (2 Y.—3 D. 3.)—*Copyhold*, (K. 1, &c.—S. 1, &c.)—*Diſmes*, (H. 16.—*Dower*, (B.)—*Guardian*, (G. 1, &c.)—*Parceners*, (B.)—*Parliament*, (R. 24.)

(R. 24.)—*Pleader*, (C. 38.—3 K. 3, 28.)—*Prohibition*, (F. 12.)—*Trade*, (D. 2.)

Cuſtoms.

Vide Parliament, (H. 11, &c.)—*Prærogative*, (D. 43, &c.)—*Trade*, (C. 1, &c.)

Cuſtoms of London.

Vide Guardian, G. 1, &c.—*London*, M.—N. 1, &c.)—*Waſt*, (B. 1, 2.)

Cuſtoms and Services.

Vide Drain, (G.)

Cuſtomary Conveyance.

Vide Baron and Feme, (G. 4.)

Cuſtomary Court.

Vide Copyhold, (R. 2, &c.)

CUSTOS BREVIUM.

Vide Courts, (C. 3.)

CUSTOS REGNI.

Vide Roy, (H. 1, 2.)

CUSTOS ROTULORUM.

Vide Chancery, (B. 4.)—*Juſtices of Peace*, (D. 4.)

CUSTOS SPIRITUALIUM.

Vide Prærogative, (D. 26, 27.)

CY PRES.

Vide Condition, (L. 1.)

DAMAGE-FEASANT.

Vide Diſtreſs, (B. 4.)—*Pleader*, (3 K. 21, &c.—3 M. 26.)

DAMAGES.

(A) Damages, when recovered.

(A. 1.) By the Common Law.

BY the Common Law, in all Actions Perſonal and Mixt, Damages were recoverable. 2 *Inſt.* 286.

And tho' the Plaintiff recovers the Thing itſelf demanded, yet he alſo recovers Damages: As, in *Detinue*. 2 *H.* 6. 15.

In Attaint; tho' he obtains a Reverſal of the former Verdict. 1 *Rol.* 574. *l.* 47.

In Ward of the Body and Land. 17 *Ed.* 3. 72. *b.*

In Prohibition. 1 *Rol.* 575. *l.* 30.

In *Audita Querela*. 1 *Rol.* 575. *l.* 20.

In Account, as Receiver. *R.* 1 *Rol.* 575. *l.* 45, 55. 1 *Leo.* 302. *Vide Poſt*, (A. 2.)

In an Appeal of Mayhem; tho' he does not count for Damages. 1 *Rol.* 575. *l.* 17.

So in all Actions upon Statutes, which give Damages to the Party grieved, or a certain Penalty, the Plaintiff recovers Damages over and above the Penalty. *R.* 1 *Rol.* 574. *l.* 20, 35.

So, in an Action founded upon a Statute, which prohibits any Thing.

In Actions where Damages are recoverable, the Succeſſor, where he is elective, ſhall recover Damages for the Time of his Predeceſſor. 1 *Rol.* 569. *l.* 20, 25.

(A. 2.) When not.

But by the Common Law no Damages were recoverable in a Real Action 2 *Inſt.* 286. 10 *Co.* 116. *a.*

Nor, in an Aſſiſe, except againſt the Diſſeiſor himſelf. 2 *Inſt.* 284.

Nor, in a *Quare Impedit*. 2 *Inſt.* 362.

Or, Partition. 1 *Rol.* 575. *l.* 14.

Nor, in a *Perambulatione faciendâ*. 1 *Rol.* 575. *l.* 7.

Nor, in Diſceit, upon a Recovery by Default. 1 *Rol.* 575. *l.* 23.

Nor, in Account. 1 *Rol.* 575. *l.* 8, 11. *Vide Ante*, (A. 1.)

Nor, in *Warrantia Chartæ*, where the Plaintiff recovers *pro Loco & Tempore*. 1 *Rol.* 574. *l.* 49.

Nor, in a *Scire facias*, or other Writ of Execution. 1 *Rol.* 574. *l.* 42.

Nor, in an Information, or Action by *Qui tam* upon a penal Statute, tho' it be for a certain Penalty. *R.* 1 *Rol.* 574. *l.* 40.

A Succeſſor who is preſentative, as a Parſon, *&c.* ſhall not recover Damages for the Time of his Predeceſſor. 1 *Rol.* 569. *l.* 22.

Nor an Heir, or Executor, for the Time of his Anceſtor or Teſtator. 1 *Rol.* 569. *l.* 15, 17.

Nor, a Reverſioner upon a Term for Years, if he recovers in an Aſſiſe. 1 *Rol.* 569. *l.* 30.

(A. 3.)

(A. 3.) When by Statute.

Yet now by the *St. of Merton*, 20 *H.* 3. 1. Damages ſhall be recovered in Dower *unde nihil habet*.

By the *St. of Gloc.* 6 *Ed.* 1. 1. in a Writ of Entry *ſur Diſſeiſin*: Be it in the *per*, in the *per* and *cui*, or in the *poſt*. 2 *Inſt.* 286. *Dy.* 370. *b.*

In an Action againſt the Alienee of the Diſſeiſor, if the Diſſeiſor has not ſufficient.

And, by Equity, againſt any one, who has the Land from the Diſſeiſor by Title, or by Wrong. 2 *Inſt.* 284.

So, by the ſame Statute, in *Mortd'anceſtor*, *Coſinage*, *Aiel*, or *Beſaiel*, or other Action againſt the Tenant for his own Intruſion, or his own Act. 2 *Inſt.* 287, 289.

And the Damages ſhall be computed for the Time from the Death of the Anceſtor to whom the Demandant makes himſelf Heir. 2 *Inſt.* 288.

So by the *St. W.* 2. 5. In an Aſſiſe of *Darrein Preſentment*, and *Quare Impedit*, *adjudicentur Damna, viz. ſi Tempus ſemeſtre tranſierit per Impedimentum alicujus, & Epiſcopus Eccleſiam conferat, & verus patronus ea vice preſentationem ſuam amittat, ſint Damna ad valorem Eccleſiæ per duos Annos: Si Tempus ſemeſtre non tranſierit, Damna ad valorem Medietatis Eccleſiæ per unum Annum.*

And therefore, where the Patron loſes his Preſentation, *hac vice*, he ſhall recover Damages to the Value of the Church for two Years. 2 *Inſt.* 362.

If the Biſhop has not collated by Lapſe, he has his Election to recover double Damages, and loſe his Preſentation; or to recover his Preſentation, and ſingle Damages only. 2 *Inſt.* 362.

If the Patron recover within ſix Months, he ſhall have Damages only for half a Year. 2 *Inſt.* 362.

Tho' the Biſhop has collated within that Time; for, the Collation being unlawful, he ſhall not loſe his Preſentation. 2 *Inſt.* 363.

But the King ſhall not recover Damages in a *Quare Impedit*: For he is not within the *St. W.* 2. 5. *R.* 6 *Co.* 51. *a. Semb.* 1 *Leo.* 150. *Cro. El.* 162.

By the *St.* 7 *H.* 8. 4. & 21 *H.* 8. 19. an Avowant, *&c.* ſhall recover Damages and Coſts. *Dub.* Whether he ſhall recover Damages. 2 *Rol.* 75.

By the *St.* 33 *H.* 8. 39. In all Suits on Specialty to the King, the King ſhall recover Coſts and Damages, as common Perſons uſe to do in Suits for their Debts.

[By 13 *G.* 2. *c.* 21. Perſons drowning Coal-pits (except the Owners) ſhall pay treble Damages and full Coſts.]

Vide Coſts, (C. 1, &c.)

(B) To whom Damages belong.

THE Damages ſhall be to him who ſuſtains the Loſs: And therefore, in Waſte by a ſurviving Siſter and Niece, for Waſte in the Life of the other Siſter, the Aunt only ſhall recover the Damages, and not the Niece. *Co. L.* 198. *a.*

So, if the Aunt and Niece join in a *Mortd'anceſtor*, the Aunt only ſhall recover the Damages until the Death of her Siſter. 2 *Inſt.* 288.

But where the Aunt and Niece join for Waſte done in their Time, they both ſhall recover Damages. 2 *Inſt.* 305.

Or, in *Mortd'anceſtor*, both ſhall recover Damages for the Time after the Death of the deceaſed Siſter. 2 *Inſt.* 288.

So, if they join in Waſte, as they may, for Waſte done in the Time of the deceaſed Siſter, and alſo in their own Time; the Aunt only ſhall have Judgment for the Damage in the Life of her Siſter, and both ſhall have Judgment for the Place waſted, and treble Damages for the Waſte done afterwards. 2 *Inſt.* 305.

(C) Damages, how ſaved.

IF the Defendant in Dower *unde nihil habet* comes at the firſt Day, and pleads, *touts temps priſt*, and this cannot be denied, he ſhall ſave his Damages. *Co. L.* 32. *b.*

So, in Admeaſurement of Dower, if the Defendant at the firſt Day pleads, *Priſt d' admeaſure.* 1 *Rol.* 573. *l.* 45.

So in Dower, if, at the firſt Day of the Summons, the Heir comes and pleads, *touts temps priſt*, and the Demandant does not reply, *a Requeſt*; for the Heir has Title. *Co. L.* 32. *b.* 33. *a.*

So in *Detinue*, if, the Garniſhee comes the firſt Day, and acknowledges the Condition broken, he ſhall ſave his Damages; for they are given againſt him for his Delay. 1 *Rol.* 573. *l.* 49. 8 *H.* 6. 11.

So, if he makes Default. 1 *Rol.* 573. *l.* 52.

So in *Detinue of Charters* againſt an Executor, upon a *Devenerunt ad Manus* after the Death of the Teſtator, if he pleads, *tout temps priſt after the Charters came to his Hands.* 1 *Rol.* 574. *l.* 5.

But the Defendant does not ſave his Damages, if he does not come upon the firſt Proceſs, at the firſt Day after the Return. 1 *Rol.* 573. *l.* 54, 574. *l.* 8.

So a Wrong-doer does not ſave his Damages, if he comes the firſt Day: As, in *Aiel, Coſinage, &c.* if the Tenant at the firſt Day tenders the Land, and pleads, *touts temps priſt.* *Co. L.* 33. *a.*

(D) To what Time allowed.

IN Perſonal Actions, Damages are allowed only to the Time of the Action commenced.

But in Real Actions, the Demandant ſhall not count of Damages: For he ſhall recover till the Time of the Verdict. 10 *Co.* 117. *a.*

Or, if a Writ of Inquiry be awarded, till the Time of the Writ. 10 *Co.* 117. *a.*

(E) How aſſeſſed.

(E. 1.) By the Jury which tries the Iſſue.

IN all Caſes where the Iſſue is tried by a Jury, and Damages are recoverable, the Damages regularly ought to be aſſeſſed by the Jury.

And if they do it not, where Damages only are recoverable, the Verdict ſhall be void.

And the Omiſſion cannot be ſupplied by a Writ of Inquiry; for thereby the Defendant will loſe the Benefit of a Writ of Attaint, if the Damages are exceſſive. *R.* 11 *Co.* 56. *a.* *Vide Poſt*, (E. 2, 8.)

Nor, by a Releaſe of Damages. *Vide Poſt*, (E. 2, 8.)

So, if there be ſeveral Defendants, and one makes Default, and the other pleads to Iſſue; tho' a Writ of Inquiry be awarded upon the Default to avoid a Diſcontinuance, yet it does not iſſue; for the Jury which tries the Iſſue ſhall aſſeſs Damages againſt all the Defendants. 11 *Co.* 6. *R.* 2 *Cro.* 349. 1 *Leo.* 141.

So, if the Defendants plead ſeverally, and there are ſeveral Iſſues, the Jury which tries the firſt Iſſue ſhall aſſeſs Damages againſt all; and the ſecond Inqueſt need not aſſeſs any Damages. *R.* 11 *Co.* 5, 6, 7.

And if the ſecond Inqueſt aſſeſs Damages alſo, the Plaintiff ſhall have his Election *de melioribus Damnis.* *R.* 11 *Co.* 5, 6, 7.

And in ſuch Caſe there is no Need of a Releaſe of the Damages aſſeſſed by the other Inqueſt; for the Acceptance of the greater Damages is a Waiver of the leſs. *R. Cro. Car.* 193. *Semb. Cro. Car.* 243.

So, if there be a Demurrer to Part, or by one Defendant, and Iſſue as to other Part, or by another Defendant, the Jury which tries the Iſſue ſhall aſſeſs

Damages upon the Demurrer conditionally. *Lut.* 875. *b.* 2 *Rol.* 723. *l.* 5. *D.* 2 *Sand.* 26.

And it ſhall not be ſupplied by a Writ of Inquiry. *Dub.* 2 *Rol.* 723. *l.* 5.

So, if there be a Demurrer upon the Evidence, the Jury which was charged with the Iſſue, may aſſeſs Damages conditionally. *Cro. Car.* 143.

(E. 2.) When they need not.

But where there is Judgment, without any Iſſue tried, Damages ſhall be aſſeſſed by the Court, or by a Writ of Inquiry. *Vide Pleader*, (Z. 1, &c.)

[The Court will not refer the aſcertaining of Damages to Prothonotary. *Barnes* 428.]

So, if there be a Demurrer to the Evidence upon a Trial, the Jury may be diſcharged without aſſeſſing the Damages, which ſhall be ſupplied by a Writ of Inquiry. *R. Cro. Car.* 143.

So in *Replevin*, if the Plaintiff be nonſuited at *Niſi prius*, and the Jury do not inquire for the Avowant, it may be ſupplied by a Writ of Inquiry. *R.* 2 *Rol.* 112.

So, if there be Judgment for Debt as well as Damages, and the Jury do not aſſeſs any Damages, it may be aided by a Releaſe of the Damages: As, in Debt, Annuity, *&c.* 11 *Co.* 56. *a*, *Bentham.*

So in Ejectment of the Cuſtody of the Land and of the Heir, and intire Damages, where they do not lie for the Heir; it ſhall be aided, if the Defendant releaſes his Damages, and takes Judgment for the Land only. 11 *Co.* 56. *a.*

Vide Poſt, (E. 5, 6.)

Vide Poſt, (E. 8.)

(E. 3.) To what Value.

(E. 3.) Not more than in the Declaration.

So the Jury cannot regularly aſſeſs more Damages than are alledged by the Plaintiff in his Declaration. 10 *Co.* 117. 1 *Rol.* 578. *l.* 5. *R. Yel.* 45, 70.

[If the Jury (by allowing Intereſt on a Judgment) give greater Damages than laid; on Error brought, Plaintiff ſhall not have Liberty in another Term to remit the Surplus, to enter Judgment for the Damages laid only. *Wray* v. *Liſter*, *P.* 12 *G.* 2. *Str.* 1110.]

Nor more for Damages and Coſts together; for it does not appear how much was intended for Damages. 1 *Rol.* 578. *l.* 45.

So the Plaintiff ſhall not recover more Damages againſt a Vouchee than are in the Count; for he comes *loco Tenentis*. 1 *Rol.* 578. *l.* 7.

The Damages ought to be aſſeſſed in direct Terms; for it is not ſufficient to ſay, that the Defendant took Goods to the Value of 20*s.*

But the Jury may aſſeſs for Damages as much as the Plaintiff has counted for; and alſo for Coſts, beyond that Sum. *R. Cro. El.* 866. 10 *Co.* 117. *b.* 1 *Rol.* 578. *l.* 35. *R.* 2 *Cro.* 69, 297. *R. Yel.* 70.

So the Court may tax, for Damages and Coſts together, beyond the Damages alledged in the Declaration: As, in Debt *ad damnum* 10*l.* Judgment *quod recuperet debitum & damna ſua, &c. ad* 12*l.* is well. *R.* 1 *Rol.* 579. *l.* 5.

So in Real Actions, where no Damages are mentioned in the Count, the Demandant ſhall recover his Damage to the Time of the Verdict, or Writ of Enquiry. 10 *Co.* 117. *a.*

So in *Detinue*, the Plaintiff may recover againſt the Garniſhee more Damages than were alledged in the Declaration; becauſe he recovers for Delay after his Declaration. 1 *Rol.* 575. *l.* 10.

[If a Jewel, for which *Trover* is brought, is not produced, it ſhall be preſumed to be of the fineſt Water. *Armory* v. *Delamire*, *H.* 8 *G. Str.* 505.]

[In Action againſt the Sheriff for falſe Return on meſne Proceſs, in Debt on Judgment where the Defendant is in bad Circumſtances, the whole Debt given in Damages againſt the Sheriff. Had the Defendant been in good Circumſtances, not ſo much. *Powell* v. *Hord*, *M.* 12 *G. Str.* 650.]

So

So the Jury may aſſeſs Damages to any Value under the Declaration; as, to a Penny, Farthing, &c. (E. 4.) When leſs.

So, to half a Farthing, &c. *R.* 2 *Rol.* 21.

So, upon a catching Bargain, the Jury may reduce the Damages to a reaſonable Sum: As, where a Promiſe was to pay for a Horſe a Barley Corn, a Nail, and double every Nail, &c. they may give the Value of the Horſe. *R.* 1 *Lev.* 111.

But if the Jury find according to the Promiſe of the Defendant, they are not ſubject to an Attaint. *Semb.* 3 *Leo.* 150. *Mo.* 419.

So, where the Jury of courſe find the Damages alledged in the Count, without Evidence, they ſhall not be ſubject to an Attaint for it. *Dy.* 369. *b.*

So, where the Defendant confeſſes, or admits the Damages for which the Plaintiff counts, the Jury ought to find ſo much; as, in Treſpaſs for *Reſcous* of a Diſtreſs *ad Damnum* 40*l.* if the Defendant juſtifies by Special Matter, he admits the Damages. 1 *Rol.* 578. *l.* 15.

So in Prohibition, if the Defendant acknowledges the Contempt alledged. 1 *Rol.* 578. *l.* 20.

So, in Debt upon the *St.* 2 *Ed.* 6. 13. for not ſetting out his Tithes, to the Damage of 200*l.* if the Defendant does not take the Damages by Proteſtation, but pleads a Diſcharge by the *St.* 31 *H.* 8. 13. and there is Iſſue upon it. *R. Al.* 88.

So in an Action in the *Debet & Solet*, for ſubſtracting Suit to a Mill, if the Defendant confeſſes the Action. 1 *Rol.* 578. *l.* 25.

In a Writ of Right of Ward, if the Defendant acknowledges his Right to the Ward. 1 *Rol.* 578. *l.* 27.

Yet a Demurrer to a Declaration does not amount to a Confeſſion of the Damages, for which the Plaintiff counts. 1 *Rol.* 578. *l.* 30.

(E. 5.) When aſſeſſed ſeverally.

In an Action againſt divers Perſons, who are found guilty of ſeveral Takings or Offences, Damages ought to be aſſeſſed againſt them ſeverally; as, in Treſpaſs for a Battery and Goods, if one be found guilty for the Battery, and the other for the Goods taken. 1 *Rol.* 570. *l.* 42.

[In Action upon the Caſe for malicious Proſecution of Indictment of Felony, whereof Plaintiff acquitted againſt Proſecutor and the Juſtice who committed, ſeveral Damages aſſeſſed. *Lane* v. *Santelow*, *H.* 4 *G.* *Str.* 79. *Sed vide infra E.* 6. *contra.*

In Debt againſt divers by ſeveral *Præcipes*. 1 *Rol.* 570. *l.* 40.

In *Decies tantum* againſt divers, Damages ſhall be againſt them ſeverally; for they are ſeveral Takings. 1 *Rol.* 570. *l.* 35.

So in an Action againſt divers, if one is found guilty at one Time, and another at another, ſeveral Damages ſhall be aſſeſſed.

[In Treſpaſs againſt ſeveral Defendants, though ſome plead to Iſſue, and are acquitted, yet Damages ſhall be aſſeſſed againſt the Defaulters. *Jones* v. *Harris*, *H.* 12 *G.* 2. *Str.* 1108. *Creſſy* v. *Webb*, *H.* 18 *G.* 2. *Str.* 1222.]

[In Treſpaſs againſt ſeveral, *A.* lets Judgment go by Default, *B.* demurs, and *C.* pleads not guilty; and it comes on to aſſeſs Damages againſt *A.* contingent Damages againſt *B.* and for trial as to *C.* who is acquitted; ſeveral Damages may be aſſeſſed againſt *A.* and *B.* *Chapman* v. *Houſe*, *T.* 13 *G.* 2. *Str.* 1140.]

So, if ſeveral Cauſes of Action are joined in one Declaration againſt the ſame Defendant, the Damages may be ſeverally aſſeſſed. *Vide Poſt*, (E. 6.)

And it is ſafeſt for the Plaintiff; for, if for one Cauſe an Action does not lie, the Plaintiff ſhall have his Damages and Coſts for the other; and the Judgment ſhall be reverſed or arreſted only for that Part, which has not a good Cauſe of Action. *R. Cro. El.* 537. *R.* 1 *Rol.* 24. *R. Mo.* 708.

As, *in Ejectione Cuſtodiæ Terræ & Heredis*, if intire Damages are given, it will be bad for the Whole; becauſe the Action does not lie for the Wardſhip of the Heir. *Dy.* 369. *b.* *Vide Ante*, (E. 2.)—*Poſt*, (E. 6.)

In Treſpaſs *quare clauſum fregit*, and for Battery of his Servant, without ſaying, *per quod Servitium amiſit*, if intire Damages are given, it will be bad for the Whole. *R.* 10 *Co.* 130. *b.*

[If Aſſault is well laid, and then *cumque etiam*, and another Aſſault, and intire Damages, it is ill. *Amyon* v. *Shore*, *H.* 11 *G. Str.* 621.]

[In Battery, two Counts, the firſt good, the ſecond with a *cumque etiam*; and becauſe Damages were intire, Judgment was arreſted. *Rudge* v. *Onon*, *P.* 5 *G. Fort.* 376.

[If *A.* and *B.* bring Treſpaſs for breaking and entering the Houſe of *A.* and taking the Goods of *A.* and *B.* and intire Damages given, it is ill. *Maddox* v. *Taylor*, *P.* 11 *G.* 2 *Ld. Raym.* 1381.]

In *Aſſumpſit* to ſtand to an Award, and not ſue Execution, and a Breach aſſigned for both, and intire Damages; if the Award was void, it will be bad for the Whole. *R.* 10 *Co.* 131.

So, in an Action for Words alledged at ſeveral Times, and the Words at one Time are not actionable. 1 *Rol.* 576. *l.* 20. *Per Popham*, *Cro. El.* 329. *Cro. Car.* 328. 1 *Lev.* 134.

So, in Covenant, *Aſſumpſit*, *&c.* if the Breach be for not Surrendering Land and Giving an Obligation, and intire Damages; where the Breach in not Giving the Obligation is null. *R.* 2 *Cro.* 115.

So, in an Action upon the Caſe, if the Plaintiff preſcribes for Honey, Wax, dead Wood, Goods of Felons, *&c.* and intire Damages are given, where for ſome of the Things the Preſcription is bad; Judgment ſhall be ſtayed for the Whole. *R. Mo.* 707. *Cro. El.* 560.

So, if the Plaintiff intitles himſelf to a Mill by a Leaſe 9 *Jac.* and aſſigns a Breach for not grinding from 2 *Jac.* to the 12 *Jac.* and general Damages are given; the Plaintiff ſhall not recover for any Part. *R. Mo.* 887.

So, in an Action upon the Caſe, if the Plaintiff charges the inveigling away his Apprentice, by which he loſt his Service for the Reſidue of the Term, which is not yet expired, and the Jury give Damages generally; it will be bad for the Whole. *R.* 2 *Sand.* 171.

So, in Covenant, if ſeveral Breaches are aſſigned, and intire Damages; if any Breach be inſufficient, it will be bad for the Whole. *R.* 1 *Sand.* 154.

So intire Damages *de Incremento* given by the Court are void for the Whole, if the Action does not lie for Part. *R. Mo.* 708.

[In Action for Words, ſome whereof not actionable; if Damages intire, Plaintiff ſhall have new *venire facias*, that they may be ſevered. *Barnes* 478, 480.]

(E. 6.) When not.

But where there is a joint Cauſe of Action, againſt divers Perſons, Damages ought not to be aſſeſſed ſeverally; and if they are, a *Venire facias de novo* ſhall go: As, in Treſpaſs againſt ſeveral, if they be all found guilty of the ſame Treſpaſs. *R.* 11 *Co.* 5. *b. Heydon. Carth.* 20.

[If two Defendants confeſs the Treſpaſs, the Damages cannot be ſevered; and if ſevered, Judgment ſhall be arreſted. *Onſlow* v. *Orchard*, *P.* 7 *G. Str.* 422.

Or, tho' they plead ſeverally. 11 *Co.* 5. *b. R.* 2 *Cro.* 384.

Or one pleads, *Not Guilty*, and the other juſtifies. *R. Cro. El.* 860. *R.* 2 *Cro.* 118.

Or, if the Declaration be againſt *A. ſimul cum B.* and againſt *B. ſimul cum A. R.* 2 *Cro.* 348.

So, if one, to Treſpaſs for Aſſault, Battery, Impriſonment, and Taking of Goods, pleads *Not Guilty* to the Whole, and the other to the Aſſault pleads *Son Aſſault*, and ſays Nothing to the Impriſonment or Goods, and it is found for the Plaintiff againſt both; Damages ſhall be aſſeſſed generally for the Whole: For the Treſpaſs being joint in the Whole, and he who pleaded *Son Aſſault* being guilty for that, will be guilty of the Whole. *R.* 3 *Lev.* 324.

[In an Action againſt ſeveral for a malicious Proſecution, Damages cannot be aſſeſſed ſeverally. *Lowfield* v. *Bancroft*, *T.* 5 *G.* 2. *Str.* 910 *Sed vide ſupra* E. 5. *contra.*]

So,

So, if a Plaintiff joins ſeveral Cauſes of Action in the ſame Declaration, againſt the ſame Defendant, intire Damages may be aſſeſſed: For it will be at the Peril of the Plaintiff if any Cauſe is not ſufficient, in which Caſe, Judgment ſhall be reverſed for the Whole; and the Defendant has no Prejudice: As, in *Aſſumpſit* upon ſeveral Promiſes. *R.* 1 *Rol.* 570. *l.* 12. 1 *Rol.* 423. 3 *Bul.* 258.

As, in Ejectment, of the Wardſhip *Terræ & Heredis*, and intire Damages: For it does not lie for the Wardſhip of the Heir. *R. Dy.* 369. *b.* *Vide Ante*, (E. 2, 5.) *Vide infra.*

So, in Waſte for ſeveral Waſtes in ſeveral Places. intire Damages may be aſſeſſed. *R.* 1 *Rol.* 569. *l.* 50. *Cro. Car.* 414.

And tho' in Treſpaſs, *Trover*, *&c.* for Goods, ſome are expreſſed inſenſibly, in *Engliſh*, * or falſe *Latin*, and intire Damages are aſſeſſed, it will be well; for the Damages ſhall be intended to be all given for the other Goods. *R.* 10 *Co.* 130, 133. *b.* * *Vide Courts*, (P. 9.)

So, in an Action for Words all ſpoken at the ſame Time, tho' ſome be not actionable, and intire Damages aſſeſſed; they ſhall be all intended for the actionable Words. *R.* 10 *Co.* 130. *b.* *R. Mo.* 142. 1 *Rol.* 576. *l.* 15. *R. Cro. El.* 329, 787. *R. Cro. Car.* 328.

So, if the Defendant pleads to the Words not actionable *Not Guilty*, and juſtifies for the others, and Iſſue upon it; if intire Damages are given, they ſhall be intended for the actionable Words: For, upon the whole Matter it appears all the Words were ſpoken at the ſame time. *R.* 1 *Rol.* 576. *l.* 25.

So, if Words not actionable are of the ſame Import with the former, and are alledged *ex ulteriori malitiâ*, and thereby refer to the former. *R. Cro. Car.* 327. *Dub. Sho.* 80.

So, in *Aſſumpſit* by an Innkeeper againſt *A. pro hoſpit' B.* at his Requeſt, and that he found *pro hoſpitio præd'* ſuch a Sum, *viz.* ſo much *pro eſculent'*, ſo much *pro poculent'*, ſo much for Apparel; after Verdict, Damages ſhall not be intended *pro Veſtitu*, which it does not belong to an Innkeeper to find. *R.* 2 *Rol.* 79.

So, if, in a Breach aſſigned, ſome Words are inſenſible, the Damages ſhall not be intended for them. *R.* 1 *Rol.* 577. *l.* 35.

So, if the Plaintiff charges for Impriſonment 7 *July*, and that the Defendant afterwards, *viz.* 2 *June* (which was a Time prior) menaced him, whereby from the ſaid 2 *June negotia intendere nequit*; the Time after the *viz.* ſhall be rejected, and no Damages intended for that. *R.* 1 *Rol.* 576. *l.* 40.

So, if the Plaintiff aſſigns ſeveral Breaches, and one is inſenſible and inſignificant, no Damages ſhall be intended for that. *R.* 1 *Rol.* 577, *l.* 15.

Or, in Covenant, where the Plaintiff ſhews ſeveral Covenants, and ſhews a Breach only upon one; all the Damages ſhall be intended for that on which the Breach is aſſigned. *R.* 2 *Rol.* 178.

So, if intire Damages are given, when an Action does not lie for Part, if the Plaintiff releaſes his Damages and Coſts, he ſhall have Judgment for the Part which is good; as, in Ejectment of Ward of the Land and Heir, where it does not lie for the Heir. *Dy.* 370. *a.* *Vide Ante*, (E. 2, 5.) *Vide ſupra.*

In *Replevin*, if the Avowant has a Verdict, which gives Damages for the whole Rent, when he was intitled only to two Thirds; he ſhall have Judgment *pro Retorno habendo*, if he releaſes his Damages. *R. Mo.* 281.

In an Action on the Caſe, if the Defendant pleads *Not Guilty* to Part, and juſtifies for Part in another County, upon which there is a Miſtrial as to one Iſſue; if the Plaintiff releaſes his Damages as to that, it is ſufficient. *R.* 2 *Cro.* 127.

So, if ſeveral Damages are given, and intire Coſts, and the Plaintiff has Judgment only for Part; he ſhall have intire Coſts. *Hob.* 6. *Vide Coſts*, (A. 1, &c.)

[If there is an Iſſue to one Count, and Demurrer to another, and Plaintiff is nonſuited on the Iſſue, Damages cannot be aſſeſſed on the Demurrer. *Snow* v. *Como*, *H.* 8 *G.* *Str.* 507.]

(E. 7.) Damages increaſed.

When increaſed upon View of a Mayhem, *Vide Battery*, (E. 3.)

Damages may be increaſed by the Court, where the principal Demand is certain: As, in Account. 10 *H.* 6. 24. *b.*

In Debt upon an Obligation, where the Deed is denied. 1 *Rol.* 572. *l.* 27.

So, if the Plea be ſent to be tried in a foreign County; for the Jury there have not full Knowledge of the Fact. 1 *Rol.* 572. *l.* 50.

So, where the Court can aſſeſs Damages without a Writ of Inquiry, they may increaſe them after a Writ of Inquiry upon a Demurrer, or Judgment by Default. *R.* 1 *Rol.* 573. *l.* 5.

So the Court may increaſe Damages upon the View of any Juſtice of the Court *en Pais*. 1 *Rol.* 572. *l.* 22.

And where the Court can increaſe, they may mitigate Damages. 1 *Rol.* 572. *l.* 25, 28. 573. *l.* 7.

But the Court cannot increaſe Damages, where the Damages are the Principal, and the Court has not certain Knowledge of the Cauſe by the Record, or other apparent Matter: As, in an Action for Slander, tho' the Defendant juſtifies. 1 *Rol.* 572. *l.* 3.

In Treſpaſs for Trees cut. 1 *Rol.* 572. *l.* 30. 1 *Brownl.* 204.

So Juſtices of *Niſi prius* cannot increaſe Damages. 1 *Rol.* 573. *l.* 30.

Nor, the Court upon the Certificate of Juſtices of *Niſi prius*. 1 *Rol.* 572. *l.* 20.

(E. 8.) Defect in aſſeſſing aided by Releaſe.

So, where Damages are not the only Thing to be recovered, the Plaintiff may ſupply a Defect in the Aſſeſſment of the Damages, by his Releaſe of the Damages: As, in Debt, Annuity. *&c.* 11 *Co.* 56. *a, Bentham.*

So, where more Damages are aſſeſſed than the Declaration mentions, the Plaintiff may aid it by a Releaſe of ſo much as exceeds the Declaration. *Semb. Ow.* 45. *R. Yel.* 45.

So, if in a joint Action of Treſpaſs, *&c.* ſeveral Damages are aſſeſſed; it ſhall be aided by a Releaſe, or *Nolle proſequi* againſt all but one Defendant. *R. Carth.* 21.

So, if it be doubtful whether Damages can be given, he may releaſe the Damages, and not the Coſts. 2 *Rol.* 75.

And Releaſe of the Damages may be at any Time before Judgment. *Ibid.*

But if the Jury do not aſſeſs Damages, where Damages only are recoverable, it cannot be aided by a Releaſe. *Vide Ante*, (E. 1.)

So a Default in Aſſeſſment of Damages cannot be ſupplied by a Writ of Inquiry: For then the Defendant will loſe the Benefit of an Attaint, if they are exceſſive. *Vide Pleader*, (Z. 1, &c.) *Vide Ante*, (E. 1.)

Vide Pleader, (S. 25.)

DARREIN PRESENTMENT.

Vide Quare Impedit, (C. 1, &c.)—*Abatement*, (H. 26.)

DARREIN SEISIN.

Vide Seiſin.—*Abatement*, (H. 25.)

DATE.

Vide Fait, (B. 3)

D A Y.

Vide Ann, (C.)

Dies Dominicus.

Vide Temps, (B. 3.)

Dies Juridici.

Vide Temps, (C. 1, &c.)

Year, and Day.

Vide Temps, (B. 1.)

Year, Day, and Waſte.

Vide Ann, Jour, & Waſte.

Comperuit ad Diem.

Vide Pleader, (2 W. 31.)

Solvit ad Diem.

Vide Pleader, (2 W. 29.)

DEAN AND CHAPTER.

Vide Eccleſiaſtical Perſons, (G. 3.)

D E A T H.

Death of an Incumbent.

Vide Eſgliſe, (N. 1.)

—— of Juſtices.

Vide Abatement, (H. 39.)

—— of the King.

Vide Abatement, (H. 38.)—*Juſtices of Peace*, (A. 8.)—*Officer*, (K. 10.)

—— of a Party.

Vide Abatement, (E. 17.—H. 32, &c.)—*Bail*, (Q. 5.—R. 5.)

—— of a Stranger.

Vide Abatement, (H. 36.)

—— of a Teſtator.

Vide Chancery, (3 Y. 17.)—*Deviſe*, (N. 21.)

——of a Vouchee.

Vide Abatement, (H. 37.)

Dying ſeiſed.

Vide Diſcent, (D. 2, 3, 4.)

DEBT.

Vide Dett.

DECEIPT.

Vide Action upon the Caſe for a Deceipt.—*Chancery*, (3 F. 1, 2.)—3 M. 1, &c.—3 N. 1.—4 D. 3.—4 H. 4.—4 L. 1.—4 O. 2.)—*Covin.*—*Juſtices of Peace*, (B. 30, &c.)—*Leet*, (L. 6, &c.)—*Parliament*, (L. 38.)—*Pleader*, (2 H.)

Writ of Diſceit.

Vide Ancient Demeſne, (E. 2.)

DECIES TANTUM.

Vide Enqueſt, (F.)—*Pleader*, (S. 46.)

DECLARATION.

Declaration in Pleading.

Vide Count.

Declaration of Uſes.

Vide Uſes, (D. 1, &c.)

DECREE.

Vide Chancery, (Y. 1, &c. *and other Places in the ſame Title.*)—*Evidence*, (C. 1.)—*Sewers*, (H. 1, &c.)—*Uſes*, (N. 20, &c.)

DEDIMUS POTESTATEM.

Vide Chancery, (K. 3.—P. 2, &c.)—*Fine*, (E. 7.)

DEED.

Vide Fait.

DEER-STEALING.

Vide Juſtices of Peace, (B. 47.)

DEFAMATION.

Vide Action upon the Caſe for Defamation.—Libel.—Pleader, (2 L. 1, &c.)—*Prohibition*, (G. 14.)

DEFAULT.

Vide Abatement, (H. 52.—I. 27.)—*Enqueſt*, (E.)—*Juſtices of Peace*, (B. 101.)—*Pleader*, (B. 11, 12.)—E. 42.—Y. 1.—3 L. 8.—3 M. 28.)—*Remitter*, (C. 5.)

DEFEAZANCE.

(A) What ſhall be.

A Defeazance is an Inſtrument which defeats the Force or Operation of ſome other Deed, or Eſtate.

And that which, in the ſame Deed, is called a Condition, in another Deed is a Defeazance.

As, if a Man covenants or grants that upon Payment of a leſs Sum at ſuch a Day, an Obligation, Recognizance, *&c.* ſhall be void. *R. Cro. El.* 623.

If a Defeazance be abſolute and perpetual, it amounts to a Releaſe. *Per Holt, Sho.* 46. *Carth.* 64. *Vide Pleader*, (2 V. 12.—2 W. 35, 37.)

So a Licence, that he ſhall not be ſued upon ſuch an Obligation, *&c.* amounts to a Defeazance. *Carth.* 64.

(B) When it ſhall be good.

(B. 1.) Of a Thing executory.

THINGS executory may be defeated by a Defeazance made at the ſame Time, or at any ſubſequent Time. *Co. L.* 236. *b.*

As, a Recognizance, Statute, Obligation, *&c.* may be defeated by a Defeazance at a ſubſequent Day, as well as upon the ſame Day. *Co. L.* 237. *a. Adm. Cro. El.* 755. *R. Cont. per* 3 *J. but Sand. acc.* 2 *Sand.* 48. *Acc. Mo.* 811. *R. Cro. El.* 623.

So, Rents, Annuity, Warranty, *&c. Co. L.* 237. *a.*

So, a Power of Revocation. 1 *Co.* 113. *a.*

So a Defeazance, that a Statute ſhall not be extended, as to Lands in *A.* is good. *R. Mo.* 811.

If a Defeazance be made of a prior Defeazance, the firſt ſhall be thereby defeated; as, a Deviſe by any ſubſequent Deviſe. 1 *Rol.* 590. *l.* 45.

(B. 2.) Of a Thing executed.

So Inheritances, and Things executed may be defeated by a Defeazance made at the ſame Time. *Co. L.* 236. *b.*

So an Obligation, &c. may be defeated by Defeazance after the Condition broken, as well as before. *R. Carth.* 64.

(C) When it ſhall not be good.

BUT a Thing executed cannot be defeated by a Defeazance at a ſubſequent Time: As, a Feoffment cannot be defeated by a Defeazance at a future Day. *Co. L.* 236. *b. Fitz Condition.* 18.

Nor a Releaſe to a Diſſeiſor; for it is executed immediately. *Co. L.* 236. *b.*

So, if a Thing, executory in it's Commencement, be executed, a Defeazance afterwards is too late: As, if a Debt be aſſigned to the King, *if the Barons of the Exchequer allow it*; if the King ſues Execution, Diſallowance afterwards by the Barons is too late, for the Debt was executed by the Aſſignment. 5 *Co.* 90. *b.*

So a Defeazance ought to be by Matter as high as the Thing which will be defeated: And therefore, if an Obligation be to pay at ſuch a Day, an Agreement, *per Scriptum manu ſuâ ſignatum*, to give Time to a future Day, is not ſufficient; for it ought to be by Deed. *R.* 3 *Lev.* 234.

So a Writing ſhall not be conſtrued as a Defeazance, without a Neceſſity: As, if *A.* covenants to pay *B.* 5*s.* a Week, and 100*l.* at his Death, and *B.* by another Deed of the ſame Date, reciting the former, covenants to ſave *A.* indemnified from all Debts and Securities before made, or afterwards to be made by him; it ſhall not be conſtrued a Defeazance of the Covenant of *A. R. Sal.* 573.

So, if it be ſaid, *that he ſhall be indemnified from the Covenant*; if it be not added, *that the Covenant ſhall be void. R. Sal.* 575.

DEFENCE.

Vide Abatement, (I. 16.)—*Pleader*, (E. 27.—3 M. 17.)

DE INJURIA SUA PROPRIA.

Vide Pleader, (F. 18, &c.)

DELEGATES.

Vide Admiralty, (G.)—*Prærogative*, (D. 14.)

DELIVERANCE.

Second Deliverance.

Vide Pleader, (3 K. 4.)

DELIVERY.

Vide Fait, (A. 3, 4.—B. 5.)—*Pleader*, 2 X. 6.)

DEMAND.

Vide Releaſe, (E. 1.)—*Rent*, (D. 3, &c.)

DEMISE.

Vide Abatement, (H. 28, 49.)—*Baron and Feme*, (G. 3.)—*Eſtates*, (B. 32.)—*Pleader*, (2 W. 14, 47, 48.—2 Z. 2.—3 O. 18.)

DEMURRER.

Vide Chancery, (H. 1, 2.)—*Pleader*, (Q. 1, &c.—2 V. 3.—2 W. 42.—*Bail*, (R. 7.)

Parol demurring.

Vide Enfant, (D. 1, 2.)

DENIZEN.

Vide Alien, (D. 1, &c.)

DEODAND.

Vide Waife, (E. 1, 2.)

DEPARTURE.

Vide Pleader, (F. 7, &c.)

DEPOSIT.

Vide Chancery, (Y. 5.)

DEPOSITION.

Vide Chancery, (P. 8.—T. 4, 5.)—*Evidence*, (C. 4.)

DEPRIVATION.

Vide Prærogative, D. 21, 22.)—*Abatement*, (H. 46.)

DEPUTY.

Vid Officer, (D. 1, &c.—*Viſcount*, (B. 1, &c.)

DERELICT LANDS.

Vide Prærogative, (D. 61, 62.)

DESCENT.

Vide Diſcent.

DE SON ASSAULT.

Vide Pleader, (3 M. 15.)

DE SON TORT DEMESNE.

Vide Pleader, (F. 18, &c.)

DETAINER FORCIBLE.

Vide Forcible Entry.

DETERMINATION.

Determination of the Authority of Juſtices of Peace.

Vide Juſtices of Peace, (A. 8.)

Determination of an Eſtoppel.

Vide Eſtoppel, (F.)

——— of a Leaſe for Years.

Vide Eſtates, (G. 10, 11, 12.)

——— of Will.

Vide Eſtates, (H. 6, &c.)

DETINUE.

(A) When it lies.

DETINUE lies by him who has Property in a Thing certain, againſt him who detains it; upon which the Plaintiff ſhall recover the Thing detained *in Specie*. *Co. L.* 286. *b.* *F. N. B.* 138. *A. E.*

So it lies by him, who has only a Special Property: As, by a Bailee of Goods. *Bro. Detinue* 20.

So it lies if the Plaintiff has a Property, tho' he never had Poſſeſſion: And therefore the Heir may maintain *Detinue* for an Heir-Loom. *Bro. Detinue* 30, 45.

If a Statute ſays, that Goods imported ſhall be forfeited, Part to the King, and Part to him who will ſeiſe or ſue for them; a Subject may have *Detinue* for his Part of the Goods, for the Action veſts the Property in him. *R.* 1 *Sal.* 223. 5 *Mod.* 193.

So it lies, tho' the Defendant came to the Poſſeſſion of the Goods by Bailment, or by *Trover*. *F. N. B.* 138. *Co. L.* 286. *b.*

If Huſband and Wife be divorced, *Detinue* lies by the Wife for Goods given with her in *Frank-marriage*. *F. N. B.* 139. *A.*

So

So it lies, tho' the Defendant quitted the Poſſeſſion before the Action brought by Delivery of the Goods to another. *Bro. Detinue* 1, 2, 33, 34, 40.

(B) For what Things it lies.

DETINUE lies for Money or Goods ſo certainly deſcribed that they may be known: As, for Money in a Cheſt, or Bag. 1 *Rol.* 606. *l.* 12, 14.

For particular Pieces of Silver, or of Gold. *R.* 1 *Rol.* 606. *l.* 25.

Or, ſo many Ounces of Silver, or of Gold. *R. Yel.* 81.

So, for Money taken in the View of another, tho' it was not in a Bag. 1 *Rol.* 606. *l.* 16.

So it lies for twenty Quarters of Wheat. *Bro. Detinue* 51.

(C) For what, not

BUT *Detinue* does not lie for Money at large; for one Piece cannot be known from another. *Co. L.* 286. *R. Cro. El.* 457.

Nor, for Wheat out of a Sack, or Bag. *Co. L.* 286.

So it does not lie for an Hawk, or other Thing of Pleaſure, tho' reclaimed.

So it does not lie *de unâ Domo vocatâ* a Bee-Houſe. *R.* 2 *Cro.* 39.

(D) When it does not lie.

AND *Detinue* does not lie, if the Plaintiff has not the General or Special Property at the Time of the Action; as, if the Defendant took the Goods as a Treſpaſſer; for by the Treſpaſs the Property of the Plaintiff is diveſted. *Per Brian*, 6 *H.* 7. 9. *a.*

So, if *A.* bails Goods to *B.* and afterwards gives them to *C. C.* ſhall not have *Detinue* againſt *B.* who had a ſpecial Property by the Bailment. *Mod. Ca.* 216.

So it does not lie againſt him, who never had the Goods: And therefore, it does not lie againſt an Executor upon a Bailment to his Teſtator, if the Goods never came to the Poſſeſſion of the Executor. *Bro. Detinue* 19.

So it does not lie, if the Goods never were detained, by the Fault of the Plaintiff: As, if the Defendant finds Goods, and, before Demand, loſes them by Accident. *Semb. Bro. Detinue* 1, 33, 40.

Detinue of Charters.

Vide Charters, (B. 1, &c.)—*Pleader*, (2 X. 1, &c.—2 Y. 6.)

Pleading in Detinue.

Vide Pleader, (2 X. 1, &c.)

Nil detinet.

Vide Pleader, (2 W. 44.—2 X. 3.)

D E T T.

(A) When it lies.

(A. 1.) Upon an Act of Parliament.

DEBT lies upon every Contract in Deed, or in Law.

As, if an Act of Parliament gives a Penalty, and does not say, to whom, nor by what Action it shall be recovered; an Action of Debt lies upon such Statute by the Party grieved: As, upon the *St.* 14 *H.* 8. 5. That every Practiser of Physick in *London* without Licence shall forfeit 5*l.* a Month, a Moiety to the King, a Moiety to the College of Physicians. *R.* 1 *Rol.* 598. *l.* 25.

Upon the *St.* 2 & 3 *Ed.* 6. 13. which gives the treble Value for not setting out of Tithes. *R.* 1 *Rol.* 598. *l.* 30. 2 *Inst.* 650.

Upon the *St.* 28 *El.* 4. which says, the Sheriff shall take for his Fees no more than 12*d.* for every 20*s.* under 100*l.* and 6*d.* for every 20*s.* above 100*l.* the Sheriff shall have Debt for his Fees. *R.* 1 *Rol.* 598. *l.* 35. *Mo.* 853. 1 *Sal.* 209. *Lat.* 17, 51. *Vide Viscount*, (F. 2.) (*Vide* 1 *Sal.* 331.)

So, for a Sum of Money payable, upon a Devise out of Land. *Per Holt*, *Sal.* 415. *Mod. Ca.* 26.

Vide Action upon Statute, (E. 1, 2.—F.)—*Vide Post*, (A. 5, 9.)

(A. 2.) Upon a Judgment.

So Debt lies upon a Judgment, within or after the Year after Recovery. 43 *Ed.* 3. 2. *b.*

Upon a Judgment for Debt or Damages in a Court of *London* by special Custom, Debt lies in *B. R.* or *C. B.* tho' the original Action could not have been brought there. *R.* 1 *Rol.* 600. *l.* 45.

So it lies there upon a Judgment in an inferior Court, removed thither by Error, or *Certiorari*. *Hut.* 118. *R.* 1 *Lev.* 134.

So it lies for Damages recovered in a Real Action; for, by the Judgment, they are reduced to a Personalty. 1 *Rol.* 600. *l.* 25, 37.

For Damages recovered in Waste. 43 *Ed.* 3. 2.

For Arrearages recovered in Account. 1 *Rol.* 600. *l.* 40.

For Damages recovered in *Right Close*, in *Antient Demesne*. 8 *Ed.* 4. 6. *a.*

So Debt lies upon a Judgment on a Recognizance against Bail. *R.* 1 *Rol.* 600. *l.* 5. 2 *Leo.* 14.

Upon a Judgment in *Scire facias*. 3 *Mod.* 188.

So it lies in *C. B.* upon a Judgment in *Scire facias* upon a Recognizance in *B. R.* *Dy.* 306. *a. in Marg.*

Debt lies in *B. R.* upon a Judgment in *C. B.* removed thither by Error. *Semb.* 1 *Sid.* 236.

So it lies there upon a Judgment there after Error brought in the *Exchequer*. *R.* 1 *Sid.* 236. *Lut.* 602. 1 *Lev.* 153. *Ray.* 100.

Or, after Error depending in Parliament; for only the Transcript of the Record is removed. 1 *Sid.* 236.

So it lies in the *Marshalsea*, or other Court of Record, upon a Judgment in *C. B.* or *B. R.* *R.* 1 *Sal.* 209.

So it lies in *C. B.* upon a Judgment there, affirmed upon Error in *B. R.* *Co. Ent.* 153.

But Debt does not lie upon a Judgment for the Arrearages of an Annuity, Rent-service, &c. for the Freehold is continuing. 43 *Ed.* 3. 2. 1 *Rol.* 600. *l.* 32. *Vide Post*, (B.)

Nor, for Damages recovered in a Court-Baron in Dower by the *St. of Merton* 1. 4 *Co.* 30. *b.* 1 *Rol.* 600. *l.* 50.

[Nor

[Nor on a Judgment of Nonſuit in an inferior Court (as the Borough-court.) *Murray* v. *Wilſon*, *H.* 25 *G.* 2. 1 *Wilſ.* 316.]

Nor does it lie upon a Judgment, after Execution ſued by *Elegit*, or otherwiſe; for he has choſen another Remedy. *Vide* 1 *Rol.* 601. *Vide Execution*, (C. 14.)

[Nor after Defendant taken on *Ca. Sa.* and diſcharged by Plaintiff's Conſent. *Vigers* v. *Aldrich*, *M.* 10. *G.* 3. 4 *B. M.* 2482.]

Tho' the Defendant, taken in Execution, eſcapes. 1 *Rol.* 601. *l.* 32.

Tho' the *Elegit* be not returned, or the Plaintiff diſagrees to the Return. *Dy.* 299. *b.* 1 *Rol.* 601. *l.* 25.

Nor does it lie, if after Judgment the Cauſe is referred, and a *Dimittitur* entred upon the Roll. 1 *Rol.* 601. *l.* 30.

Or, the Record be removed by Error. *Semb.* 2 *Vent.* 261. if the Plaintiff does not declare upon the ſpecial Matter; for then it lies. *R.* 3 *Lev.* 397. *R. Cont.* where only a Tranſcript of the Record is removed. 1 *Lev.* 153.

[Debt lies not in *Ireland* on a Judgment in *England*. *Semb Otway* v. *Ramſay*, *P.* 11 *G.* 2. *Str.* 1090.]

Vide Pleader, (2 W. 36, &c.)

(A. 3.) Upon a Statute, or Recognizance.

So Debt lies upon a Statute-Merchant; for it is in the Nature of an Obligation, and has the Seal of the Party. 1 *Rol.* 599. *l.* 40.

And upon a Recognizance in the Nature of a Statute-Staple. *Dub.* 1 *Rol.* 599. *l.* 50. 1 *Leo.* 52.

So, upon a Recognizance before the Mayor of *London*, &c. *Dy.* 219 1 *Leo.* 284.

Upon a Recognizance in *Chancery*. *Dy.* 369. *b.* 306. *a.* *Cro. El.* 608. 1 *Ver.* 313. but it ought to be ſued by *Scire facias* in *Chancery*.

So it lies in *B. R.* upon a Rocognizance againſt Bail in *C. B.* *Mod. Ca.* 132.

Or, upon a Recognizance by Bail in the ſame Court. *Mod. Ca.* 159. *R. Trin.* 13 *Ann. in C. B.* *Vide infra.*

So Debt lies upon a Recognizance, tho' he had Judgment before in a *Scire facias* upon the ſame Recognizance, which ſtands in Force. *R. Cro. El.* 608, 817.

So, upon a Writing deſigned to be a Statute-Staple, but not executed purſuant to the Statute. *R. Cro. El.* 233, 494. *Vide Statute-Staple*, (A.)

But Debt does not lie upon a Statute-Staple; for the Seal of the Party is not affixed. 1 *Rol.* 599. *l.* 45. *Cont. Semb. Aſt. Ent.* 223, 237.

So it does not lie upon a Recognizance by Bail in *B. R.* for the Bail will be ouſted of the Advantage of rendring the Body before the Return of the ſecond *Scire facias*, &c. *Cont.* 1 *Brownl.* 65. *R. acc. Ray.* 14. *Cont. Mod. Ca.* 132, 159. *Vide Bail*, (R. 1, 9.) *Vide ſupra.*

Nor, (as it ſeems,) upon a Recognizance by Bail in *C. B.* *Cont.* 1 *Rol.* 600. *l.* 15. *R. cont. in C. B. Trin.* 13 *Ann.*

So it does not lie upon a Recognizance, after Judgment upon it in a *Scire facias*. 1 *Rol.* 601. *l.* 15, 20.

(A. 4.) Upon other Specialty.

So Debt lies upon an Obligation, or any other Deed or Specialty.

As, if a Man by Obligation, or other Deed, acknowledges that he has received Money from *A. ad computandum*; *A.* may have Debt upon it. 1 *Rol.* 597. *l.* 30.

Or, that he has ſo much of the Money of *A.* in his Hands. 1 *Rol.* 597. *l.* 47.

So, if he covenants to pay *A.* a certain Sum, Debt lies upon it.

Or, to pay his Proportion of ſuch a Suit, with an Averment that his Proportion was ſo much. *R.* 3 *Lev.* 429.

So Debt lies upon a Bill to pay 20 *l.* for the true Payment of 10 *l.* *R.* 2 *Vent.* 106.

So

So Debt lies upon a Tally againſt a Teller, when Money comes to his Hands. 1 *Rol.* 599. *l*, 32.

[Upon a Charter-party, which is a Deed. *Hooper* v. *Shepherd*, *P.* 11 *G.* 2. *Str.* 1089.]

(A. 5.) Debt for Rent.

So, if a Leaſe be of Lands or Tenements for Years, or at Will, rendring Rent; Debt lies for the Rent, by the Common Law. *Lit. S.* 58, 72. 1 *Sid.* 401.

So, if a Leaſe be for Years, or at Will, of an incorporeal Inheritance; as an Advowſon, Common, Tithes, Fair, Market, Franchiſe, or Office, &c. *Co. L.* 47. *a.*

So Debt lies, tho' the Leaſe be rendring Corn, or other collateral Thing. *R.* 1 *Rol.* 591. *l.* 30. 4 *Leo.* 46. 3 *Leo.* 260.

So, if a Leaſe be for Life, after the Eſtate of Freehold determined Debt lies for Arrears: As, if a Leaſe be for Life, or *pur auter Vie*, and the Leſſee, or *Ceſtuy que vie* dies, Debt lies for Rent due at his Death. 1 *Rol.* 596. *l.* 17, 20. *Co. L.* 162. *a.* 4 *Co.* 49. *a.*

So, if the Leſſor enters for a Condition broken, or a Forfeiture, Debt lies for Rent due before. 19 *H.* 6. 42. *b.* 1 *Rol.* 596. *l.* 40.

So, if he recovers for Waſte. 1 *Rol.* 596. *l.* 35.

So, if the Leſſee ſurrenders to him in the Reverſion. 4 *Co.* 49. *a.*

Or, aſſigns to *A.* who ſurrenders. 4 *Leo.* 17, 8.

So, if there be a Leaſe for Life, Feoffment, &c. rendring Rent, for ten Years, Debt lies for it; for during the Years, it is but a Chattel. 1 *Rol.* 595. *l.* 10.

So, for Rent, upon a Leaſe for Years upon Condition to have the Fee, due before the Condition performed. 1 *Rol.* 595. *l.* 15.

So, if Rent be granted in Fee for Life, &c. with a *Nomine Pœnæ*; Debt lies for the *Nomine Pœnæ*, tho' it goes to the Heir along with the Rent. *Co. L.* 162. *b.* 1 *Rol.* 595. *l.* 17.

So, by the *St.* 32 *H.* 8. 37. Debt lies by an Executor or Adminiſtrator of any ſeiſed of a Rent Service, Charge, or Seck, or of a Fee-farm Rent, in Fee, in Tail, or for Life of another, againſt him that ought to pay the ſame, his Executor or Adminiſtrator.

A Leaſe for Life, or in Tail, rendring Rent; it is a Rent-ſervice within this Statute. *Co. L.* 162. *b.*

So it lies againſt any, who claim under him, that ought to pay, by Purchaſe, Deviſe, or Deſcent. 2 *Ver.* 613. *R.* 1 *Leo.* 302.

So, *by the ſame Statute*, if a Wife ſeiſed of a Rent, &c. in Fee, Tail, or for Life, dies; her Huſband ſhall have Debt for the Arrears due at her Death.

And this, as well for Arrears before the Coverture, as after. *Co. L.* 162. *b.*

So by the *St.* 29 *Car.* 2. 8. which gives Remedy for Augmentations to Vicars, &c. by Debt or Diſtreſs, Debt lies upon an Augmentation of an annual Payment reſerved upon a Leaſe for Lives, during the Continuance of the Lives. *R.* 3 *Lev.* 83.

So now, by the *St.* 8 *An.* 14. Though a Leaſe for Life be continuing, any Perſon having Rent due on any Leaſe for Life or Lives, may bring Debt for the ſame, in the ſame Manner as if due on a Leaſe for Years.

Vide Rent, (D. 3, &c.)

(A. 6.) Debt for an Annuity.

So, if an Annuity be granted for Years, Debt lies for the Arrears. *R. Cro. El.* 268. *R. cont. Cro. El.* 3. *Dub. Cro. El.* 895. *Acc.* 1 *Bul.* 151. *D. cont. per Holt*, 5 *Mod.* 143.

So, if it be granted for Life, or *pur auter Vie*; after the Eſtate determined, Debt lies for the Arrears before. *R. Goldſb.* 30.

So, if the Grantee of an Annuity in Fee, leaſes for Years; after the Term expired, he ſhall have Debt for the Arrears during the Term. 1 *Rol.* 597. *l.* 10.

So if a Parſon, who has an Annuity in Right of his Church, reſigns or is deprived; he ſhall have Debt for the Arrears incurred before his Reſignation or Deprivation. 19 *H.* 6. 41. *b.* 1 *Rol.* 595. *l.* 50.

So, if the Parſon dies, his Executors ſhall have it. 4 *Co.* 49. *a.*

So, if a Biſhop had granted an Annuity before the *St.* 1 *El.* 19. confirmed by the Dean and Chapter, and dies; Debt lies againſt the Succeſſor for the Arrears at his Death. *R.* 1 *Rol.* 592. *l.* 20.

(A. 7.) When it does not lie.

But by Common Law, Debt does not lie for the Arrears of a Rent or Annuity in Fee, in Tail, or for Life, ſo long as the Eſtate of Freehold has Continuance. 8 *H.* 6. 6. *b.* 1 *Rol.* 594. *l.* 55.

As, if the Lord aliens his Seigniory in Fee; Debt does not lie for Rent of his very Tenant in Arrear before the Alienation. 19 *H.* 6. 42. *b.*

If a Leſſor, after a Leaſe for Life, grants the Reverſion; Debt does not lie for the Arrears before the Grant. 1 *Rol.* 595. *l.* 35.

If he enters upon the Leſſee, and detains until Payment; he ſhall not, during his Seiſure, have Debt for Arrears before. 1 *Rol.* 596. *l.* 25.

If a Leſſee for Life leaſes to *A.* for Years, and then ſurrenders to his Leſſor upon Condition, and *A.* ſurrenders to him and takes a new Leaſe, and after the Condition performed the Leſſee for Life re-enters, and ouſts the Leſſee for Years, who re-enters; he ſhall not have Debt againſt *A.* for Rent upon the firſt Leaſe, for it was determined. *R. Cro. El.* 264.

So, if a Rent or Annuity in Fee, *&c.* be demiſed for Years; the Leſſee ſhall not have Debt during the Term. *R.* 1 *Rol.* 595. *l.* 40. *Semb. Cro. El.* 895.

If a Leſſee for Life of a Rent, *&c.* acknowledges a Statute, and afterwards releaſes to the Terre-tenant, and then the Conuſee extends, the Conuſee ſhall not have Debt for the Rent, tho' his Intereſt is but a Chattel; for, as to him, the Freehold, out of which it was derived, has Continuance. *R.* 1 *Rol.* 596. *l.* 5.

So an Executor or Adminiſtrator ſhall not have Debt upon the *St.* 32 *H.* 8. 37. for the Arrears of a Rent-charge againſt the Occupier; but it ought to be againſt the Tenant of the Land. *Semb. Al.* 62.

Nor, againſt the Iſſue in Tail for Arrears incurred in the Life of his Anceſtor. *R.* 2 *Ver.* 613.

Nor, againſt the Lord by Eſcheat, or Tenant in Dower, or by the Curteſy; for they do not claim merely by the Party. 1 *Leo.* 302, 3.

[If an Annuity is deviſed to a *feme covert*, on Condition that ſhe releaſes all Right and Title, *&c.* and ſhe dies without releaſing, Debt cannot be maintained for the Arrears of the Annuity. *Acherly* v. *Vernon*, *T.* 8 & 9 *G.* 2. *C. B. Fort.* 188.]

(A. 8.) Debt upon Contract.

(A. 8.) Expreſs.

So Debt lies upon every expreſs Contract to pay a Sum certain: As, if a Man covenants or grants to pay. *R.* 1 *Leo.* 208.

So, if a Man retains Counſel for 40*s.* *per Ann'*; Debt lies for the 40*s.* 37 *H.* 6. 8. *b.*

If he retains an Attorney to proſecute a Suit for him, *capiendo* 3*s.* 4*d.* *per* Term for his Fee beſides Expences; Debt lies for his Fee. *R.* 2 *Rol.* 76. *Vide Attorney*, (B. 18.)

So, if a Solicitor or a Stranger retains him for another. *R.* 1 *Rol.* 593. *l.* 51. 594. *l.* 10.

And it lies againſt him for whom he was retained, as well as againſt the Retainer. *R.* 1 *Rol.* 593. *l.* 45.

So it lies upon *Conceſſit Solvere*, according to the Cuſtom of *London*, *Briſtol*, *&c.* *R.* 4 *Leo.* 105.

So, if a Man pays the Debt of *B.* at his Requeſt, to be repaid upon Requeſt; Debt lies for it againſt *B.* for it is a manifeſt Contract between them. *R.* 1 *Rol.* 593. *l.* 25.

Or, delivers Money to *B.* to be repaid at ſuch a Day. 1 *Rol.* 597. *l.* 50.

Or, to be ſafely kept. 1 *Rol.* 597. *l.* 51.

Or, to be *B.*'s Money upon ſuch a Condition, otherwiſe to be re-delivered. 41 *Ed.* 3. 10.

Or, to be paid to another; and he does not pay it. *Dy.* 20. *b.*

Or, to be expended for his Uſe; and he does not expend it. *R. Cro. El.* 644.

So, if Money be delivered to *A.* to be paid to *B.* Debt lies by *B.* *R.* 2 *Rol.* 441.

So Debt lies tho' the Contract be by Way of a Promiſe executory upon a good Conſideration; as, upon a Promiſe to pay 100*l.* upon the Marriage of *B.* 1 *Rol.* 593. *l.* 10.

A Promiſe to a Phyſician, Surgeon, *&c.* if he makes a Cure. 1 *Rol.* 593. *l.* 15, 17.

Upon a Promiſe to a Carpenter, Labourer, *&c.* if he builds or repairs an Houſe, Way, *&c.* 37 *H.* 6. 9. *a.* 17 *Ed.* 4. 5. *a.*

So, tho' the Promiſe be for the Advantage of a Stranger: As, if a Man promiſes to pay ſo much for the Education of the Child of another. *R. Al.* 6.

If he retains a Taylor for 40*s.* to make a Garment for his own Daughter. 2 *Rol.* 77.

Or, for the Servant of his Daughter. *R. Cro. El.* 880.

So it lies, if the Sum be not certain, if it may be aſcertained: As, upon an Agreement to pay the Debt of *A.* *R.* 2 *Jon.* 184. *Dub. Cro. El.* 758.

To pay a Taylor *Quantum meruit* for making Garments, and finding Neceſſaries for them.

[It lies for that Defendant bought Goods for ſo much Money as they ſhould be worth, with an Averment that they were worth ſo much. *Vaux* v. *Manwaring*, *M.* 1 *G. Fort.* 197.]

To pay his Proportion of the Charge of a Suit, with an Averment that his Proportion is ſo much. *R.* 3 *Lev.* 429.

To pay ſo much for the Time his Son had dieted with him; where the Father promiſed 8*l.* *per Ann.* and died within the Year. *Cro. El.* 756.

So, if a Man in a Tavern has Wine, Debt lies for it.

(A. 9.) Implied.

So Debt lies, tho' there be only an implied Contract: As, if a Man be found in Arrear upon Account. 1 *Rol.* 598. *l.* 47.

Tho' the Account be made before Auditors.

If a Bailiff pays more than he has received, Debt lies for the Surplus. *R.* 1 *Rol.* 598. *l.* 51.

So Debt lies for Money awarded by an Arbitrament. 2 *Sand.* 66. *Vide Arbitrament*, (I. 1.)

So, by *B.* for Money paid to *A.* for the Uſe of *B.* 1 *Rol.* 597. *l.* 55. *Yel.* 23.

Tho' paid there for his Uſe without his Command. *Semb. cont.* 1 *Rol.* 597. *l.* 25.

So Debt lies for a *Nomine Pœnæ.* 1 *Leo.* 110.

So Debt lies for the Penalty of a By-Law, tho' it be not ſaid, by what Action it ſhall be recovered. *R.* 1 *Rol.* 599. *l.* 25.

So if, by Cuſtom in a Borough, the Burgeſſes preſcribe to chooſe a Perſon to collect the Lord's Rents, and to pay 20*s.* *per Ann.* for the Profits of a Market; Debt lies by the Lord for the 20*s.* 1 *Rol.* 595. *l.* 20. 597. *l.* 5.

So Debt lies for a Fine, due by Cuſtom for a Pound-breach. 11 *H.* 7. 14. *a.* *Hard.* 486.

So, for Cuſtoms due for Merchandize, tho' the Goods are forfeited for Non-Payment. *R.* 1 *Rol.* 383.

So, for Toll due by Cuſtom. *Hard.* 486.

So, for Bar-fees due to a Gaoler. *Ibid.*

So, for every Duty created by the Common Law, or by Cuſtom. *Per Hale*, *Hard.* 486.

So

So Debt lies for a Pain or Amerciament in a Court-Baron. 2 *Sand.* 66. *R.* 1 *Leo.* 203. *Dub. Carth.* 184.

So, for a Fine aſſeſſed by a Steward in a Court-Leet. *R. Cro. El.* 581. *Vide Leet*, (O. 11.)

So, for a Fine upon an Admittance to a Copyhold. 1 *Sid.* 58. 2 *Mod.* 230. 3 *Mod.* 240. *Adm. Hard.* 487. *Vide Copyhold*, (H. 6.)

So, for a Fine impoſed for the Refuſal of an Office. *R.* 3 *Lev.* 116.

So, for the Profits of Courts, reſerved to the Lord upon a Grant of the Manor. *Mo.* 870.

So Debt lies againſt a Sheriff for Money levied by him upon a *Fieri facias*; for the Law creates a Contract for his paying. *R.* 1 *Rol.* 598. *l.* 10,

Tho' the Writ be not returned. *R.* 1 *Rol.* 598. *l.* 15.

So Debt lies upon any Statute, which gives an Advantage to another, for the Recovery of it: As, upon the *St.* 32 *H.* 8. 1. for Money deviſed to be paid out of Land. *Per Holt, Mod. Ca.* 26. *Vide Ante*, (A. 1.) *Vide Action upon Statute*, (E. 1, &c.)

For Fees given by Statute to a Sheriff. *R. Mo.* 853.

For Fees upon the Execution of an *Elegit*. 1 *Sal.* 209.

Vide By-Law, (D. 1.)

(B) When Debt does not lie.

BUT Debt does not regularly lie for a Thing fallen, of which there is an Eſtate of Inheritance or Freehold continuing: As, for Arrears of Rent, or Annuity in Fee, in Tail, or for Life. 4 *Co.* 49. *Vide Ante*, (A. 7.)

So Debt does not lie by the Lord, for a Relief. *Co. L.* 47. *b.*

Nor, for Eſcuage. *Ibid.*

Nor, for *Aide pur faire Fitz chivaler ou File marrier*. *Ibid.*

So Debt does not lie for the Arrears of a Rent in Fee, in Tail, &c. tho' the Eſtate be determined by Act in Law: As, if Rent be in Arrear, and then the Tenancy deſcends to the Lord. 4 *Co.* 49. *a.* *Vide Ante*, (A. 7.)

And it did not lie by an Executor or Adminiſtrator, where his Teſtator or Inteſtate could not have it, until the *St.* 32 *H.* 8. 37. 4 *Co.* 49. *a.*

So Debt does not lie upon a Judgment, Recognizance, &c. when the Party has choſen another Remedy. *Vide Ante*, (A. 2, 3.)

So Debt does not lie upon an Agreement by Way of Promiſe, where the Conſideration was executed: As, to pay ſo much for Service done, &c. 1 *Rol.* 594. *l.* 25. *Vide Action upon the Caſe upon Aſſumpſit*, (F. 6.)

Tho' it was executed at his Requeſt: As if, in Conſideration of Goods ſold to *A.* at his Requeſt, he promiſes to pay if *A.* does not pay; Debt does not lie, but *Aſſumpſit*, for the Contract was by the Sale, to which he was not a Party; and his Requeſt, without more, does not make him Debtor. *R.* 1 *Rol.* 594. *l.* 30. *Hard.* 486.

So, if he makes ſuch Promiſe immediately after the Sale; for it ſounds in Covenant. 1 *Rol.* 594. *l.* 35.

So, if he promiſes *A.* to pay him 10*s. per* Week, if he will ſerve his Aunt; Debt does not lie, for the Service was not to himſelf; and ſo there wants a *Quid pro quo*. *Dy.* 272. *in Marg.*

So, if a Man be at a common Inn, Debt does not lie for Diet of him, his Servants, or Horſes, without ſome Price agreed, or ſome Contract. 3 *Leo.* 161.

So, if a Man undertakes, that if *A.* will releaſe his Debt to *B.* he himſelf will be his Debtor; Debt does not lie. 9 *H.* 5. 14.

If a Man demiſes for Years, if a Life ſo long lives, (without ſaying what Life, which is uncertain and void,) at ſuch a Rent; Debt does not lie for the Rent as a Sum certain due by Covenant. *Skin.* 570.

So, if the Property be not altered by the Bailment, Debt does not lie: As, if a Man delivers Money to *B.* in a Bag unſealed, he cannot have Debt for it. 1 *Rol.* 597. *l.* 20.

So Debt does not lie upon an Arbitrament for a collateral Thing awarded. *R.* 1 *Rol.* 591. *l.* 32.

So Debt does not lie for Arrearages found upon an Account, where Account does not lie for ſuch Thing. 1 *Rol.* 599. *l.* 2, 5.

So Debt does not lie for the Surplus, where a Receiver pays more than he received; for he ſhall not have Allowance as a Bailiff. *R.* 1 *Rol.* 599. *l.* 20.

So Debt does not lie for the Intereſt of Money, due upon a Loan; but he ought to have *Aſſumpſit*. *R.* 1 *Kent.* 198.

So Debt does not lie upon an Agreement to pay Firſt-Fruits to the Biſhop; for it is not within the Conuſance of the Temporal Courts. *Co. L.* 162. *b.*

So Debt does not lie upon a Bill of Exchange againſt the Acceptor; for the Acceptance binds him by the Cuſtom of Merchants, but does not raiſe a Duty *R. Hard.* 485.

So it does not lie upon a Note to pay, without a Conſideration; tho' alledged that it binds by Cuſtom. *R. Skin.* 398.

[But if a *Mutuatus* be laid with it, it lies. *Sed* Q. How to enter Judgment on it? *Welſh* v. *Craig*, *H.* 12 *G.* *Str.* 680.]

So Debt does not lie for Part of a Debt upon an intire Contract: As, if a Man by Deed promiſes to pay 100*l.* *per Ann.* to *A.* for collecting his Rents, and dies after three Quarters of a Year expired, and within the Year; Debt does not lie by *A.* for 75*l.* for his Salary for the three Quarters of a Year. *R.* 1 *Sal.* 65. *Vide Poſt*, (C. 1.)

Vide Ante, (A. 2, 3, 7.)

(C) By whom Debt lies.

By whom Covenant lies. Vide Covenant, (B. 1, &c.)

IN Caſes where Debt lies, it is maintainable by the Party to the Contract, his Executor, or Adminiſtrator.

So, ſometimes the Executor, or Adminiſtrator, may have Debt, where his Teſtator could not have it: As, by the *St.* 32 *H.* 8. 37. by the Executor, or Adminiſtrator, of a Man ſeiſed of a Rent, Fee-farm, *&c.* for Arrears due at his Death. *Vide Ante*, (A. 5.)

So, by the Executor or Adminiſtrator of the Lord, for a Relief due at his Death. *Co. L.* 162. *b.* 11 *H.* 6. 15. *a.*

Or, for Eſcuage; for it is a Fruit fallen, and goes to the Executor.

So, for *Aide*, due at his Death, *pur faire Fitz Chivaler ou File marrier*. 1 *Rol.* 596. *l.* 50.

So Debt lies by him, who is privy in Eſtate: As, upon a Leaſe for Years by *B.* Debt lies by his Heir for Rent due after the Death of his Anceſtor. 1 *Rol.* 591. *l.* 47. 5 *H.* 7. 19. *a.*

So Debt lies by an Aſſignee of a Reverſion for Rent incurred after Attornment. *Co. L.* 310. 1 *Rol.* 591. *l.* 45. and this, by the Common Law, without the Aid of the *St.* 32 *H.* 8. 34. 4 *Mod.* 81.

So, by an Aſſignee of Part of the Reverſion for his Proportion. *Adm. Cro. El.* 637, 651.

So, by a Grantee of Rent, if the Leſſee attorns. *Semb.* 1 *Lev.* 22.

So, by the Deviſee of a Reverſion; for the Rent is incident to the Reverſion. *R.* 5 *H.* 7. 19. *a.* *Skin.* 367.

So, if a Deviſe be of a Reverſion of Lands *in Capite*, which is void for a third Part by the *St.* 32 & 34 *H.* 8. it lies by the Deviſee for two third Parts of the Rent. *R. Cro. El.* 851. *Vide Ante*, (B.)

So, if a Deviſe be of a Moiety of a Rent, without the Reverſion, to three Sons to be divided; Debt lies by each Son for his Share of the Rent. *Per* 3 *J. Poph. cont. Cro. El.* 637, 651. *Vide Suſpenſion.*

So, by a Deviſee of a Reverſion againſt an Aſſignee of a Term, after Aſſignment of the Reverſion, for Arrears due before Aſſignment. *R. Skin.* 367.

So, if Leſſee for Years aſſigns all his Term to *B.* rendering Rent; Debt lies by the Leſſee for the Rent, *as ſuch*, for it is not a Sum in Groſs, tho' no Reverſion remains in the Leſſee. *R. Carth.* 161. *Vide Poſt*, (E.)

So,

So, againſt the Aſſignee of *B.* *Carth.* 162.

So, if *A.* the Leſſee, ſurrenders, rendring Rent, he ſhall have Debt for the Rent, *as ſuch*, for it is not a Sum in Groſs. *Carth.* 162. *in Marg.*

So Debt for Rent, reſerved upon a Demiſe, lies by the Lord, who has the Reverſion by Eſcheat. *Adm.* 5 *H.* 7. 19. *a.* 3 *Co.* 22. *b.*

So, if a Reverſion be granted in *Mortmain*, Debt lies for the Rent by the Lord, who entered for the Alienation in *Mortmain*. 5 *H.* 7. 19. *a.*

So, by the Lord, who claims the Reverſion by the Purchaſe of his Villein. *Ibid.*

So Debt lies by the Aſſignee of a Reverſion, after the Term expired, for Rent due at the End of the Term. *R.* 2 *Cro.* 117.

So, by an Executor of an Adminiſtrator, who being poſſeſſed of a Term for 100 Years, made a Leaſe for five Years, for Rent due before the Death of the Adminiſtrator; tho' the Intereſt in the Reſidue of the Term belongs to the Adminiſtrator *de Bonis non*, *&c.* *R.* 2 *Lev.* 100.

(D) By whom, not.

BUT if a Leſſee aſſigns his Term, Debt does not lie by the Leſſor, againſt the Executor of the Leſſee, for Rent due after the Aſſignment. *R.* 3 *Co.* 24. *a.* *Cro. El.* 556. *Poph.* 121. *but R. cont.* 1 *Sid.* 266. 2 *Vent.* 209. *Vide Poſt*, (E.)

So, if the Leſſor grants his Reverſion to another, he ſhall not have Debt for Rent due after his Grant; for the Rent is incident to the Reverſion. 3 *Co.* 22. *b.* 23. *a. b.*

So a Grantee of a Reverſion ſhall not have Debt againſt the Leſſee for Rent due after Aſſignment of the Term to another. *R. Poph.* 55.

So, if the Grantee of a Rent, when the Rent is in Arrear, aſſigns his Rent, and dies; his Executor ſhall not have Debt for the Arrears by the *St.* 32 *H.* 8. 37. for by the Aſſignment, his Teſtator himſelf had loſt his Arrears. 4 *Co.* 50. *b.*

(E) Againſt whom Debt lies.

Againſt whom Covenant lies, Vide Covenant, (C. 1, &c.)

SO Debt is maintainable againſt the Party to a Contract, his Executor, or Adminiſtrator. *Dy.* 4. *b.*

As, if a Leſſee aſſigns his Term, the Leſſor himſelf may have Debt for Rent due after the Aſſignment, if he will; for the Privity of Contract continues, and the Leſſor need not relinquiſh the Leſſee, and reſort to the Aſſignee *nolens volens*, when perhaps the Aſſignee is not reſponſible. *R.* 3 *Co.* 23.

So, if the Executor or Adminiſtrator of the Leſſee aſſigns the Term, Debt lies againſt him for Rent due after the Aſſignment. *R. cont.* 3 *Co.* 24. *a.* *Cro. El.* 555. *Poph.* 120. *Semb. cont. Cro. El.* 715. *Mo.* 600. *Dub. Lat.* 260. *R. acc.* 1 *Sid.* 266. *R. acc.* 2 *Vent.* 209. 3 *Mod.* 326. 1 *Lev.* 127.

So, if the Leſſee himſelf aſſigns, Debt lies againſt his Executor, or Adminiſtrator, if he has Aſſets. *Cont.* 3 *Co.* 24. *a.* *Dub. Lat.* 260. *R. acc.* 1 *Sid.* 266. 2 *Vent.* 209.

So, if the Leſſee aſſigns Part of the Land, a Grantee of the Reverſion ſhall have Debt againſt the Leſſee for the whole Rent; for the Privity continues, where he has aſſigned only Part of the Land demiſed. *R.* 3 *Co.* 24. *a.* *Cro. El.* 633.

So, if the Executor of a Leſſee aſſigns Part of the Land, the Leſſor may have an Action againſt the Executor for the whole Rent due after the Aſſignment. *R. Lit.* 53.

If the Leſſee aſſigns Part of the Land to *A.* who enfeoffs *B.* yet Debt lies againſt the Leſſee. *Semb. Dy.* 4. *b.*

So, if the Leſſee himſelf makes a Feoffment. *R. Dy.* 4. *b. in Marg.*

So, if the Leſſee gives an Obligation with Condition for Payment of the Rent, Debt lies by the Leſſor, upon the Obligation, after Aſſignment of the Term, and Acceptance of Rent from the Aſſignee. *Cro. Car.* 188.

So Debt lies againſt the Executor, or Adminiſtrator of the Aſſignee, tho' the Executor waives the Poſſeſſion; for, if he be Executor, he cannot waive in Part. *R.* 2 *Rol.* 132.

So, if the Leſſee aſſigns his Term, the Leſſor, if he will, ſhall maintain Debt againſt the Aſſignee. 2, *Dy.* 247, 8.

So, if the Leſſee aſſigns a Moiety of the Land for the whole Term; the Leſſor, if he will, may maintain Debt againſt the Aſſignee for a Moiety of the Rent. *R.* 2 *Lev.* 231.

Or a joint Action againſt the Leſſee and Aſſignee. *D.* 2 *Cro.* 411.

So, if the Leſſee aſſigns his Term, rendring Rent to him; tho' the whole of the Term be aſſigned, Debt lies by the Aſſignor upon the Contract, againſt the Aſſignee, his Executor or Adminiſtrator. *Adm.* 2 *Mod.* 175. *Vide Ante*, (C.) *Vide Chancery*, (2 Z.)

(F) Againſt whom, not.

BUT if a Leſſee aſſigns his Term, and the Leſſor accepts Rent from the Aſſignee; Debt does not lie afterwards againſt the Leſſee, his Executor, or Adminiſtrator, for he may plead in Bar, ſuch Aſſignment and Acceptance of Rent by the Leſſor. *R.* 3 *Co.* 24. *b.* *Cro. El.* 715. *Mo.* 600., *R.* 2 *Cro.* 334. 2 *Bul.* 151.

So, if an Executor, or Adminiſtrator of a Term aſſigns it, and the Leſſor accepts the Rent from the Aſſignee. 3 *Co.* 24. *Cro. El.* 715. *Mo.* 600.

So, tho' it does not appear that the Leſſor had Notice of the Aſſignment, at the Time of the Acceptance of the Rent; for it ſhall be intended till it appears to the contrary. *R.* 2 *Cro.* 334.

So, if the Leſſor accepts any Part of the Rent. *Semb.* 1 *Lev.* 308.

So, if a Leaſe be of Tithes, rendring Rent, and the Leſſee aſſigns, and the Leſſor accepts Rent from the Aſſignee; tho' Rent does not iſſue out of Tithes. *Dub.* 1 *Lev.* 308.

So, if the Aſſignee of a Term aſſigns over to another; Debt does not lie againſt the firſt Aſſignee, for Rent due after his Aſſignment, tho' no Notice of the Aſſignment or Acceptance of Rent be alledged; for the Privity is gone by his Aſſignment. *R. per* 2 *J. cont. but Powell acc. in C. B. but this Judgment was reverſed in B. R.* 3 *Lev.* 295. 2 *Vent.* 234. 1 *Sal.* 81. *Carth.* 177. 4 *Mod.* 71. *R. cont. per* 2 *J. Twiſd. acc.* 1 *Sid.* 338, 9. *Ray.* 162.

[If the Aſſignee of a Term aſſigns it over to a Beggar, a Priſoner, it is not Fraud, and he is diſcharged of the Rent. *Lekeux* v. *Naſh*, *H.* 18 *G.* 2. *Str.* 1221.]

So, if a Leſſee aſſigns his whole Term to the Leſſor, rendring Rent; Debt does not lie againſt the Executor of the Leſſor, for the Aſſignment amounts to a Surrender, and therefore no Remedy after the Death of the Leſſor, but in Equity. *R.* 2 *Mod.* 175.

(G) Debt to the King.

(G. 1.) By what Means accrued.

IF a Man gives an Obligation, Recognizance, *&c.* to the King, he becomes indebted to the King.

[A Bond taken in the Name of the Crown, by the Caſhier of the Exciſe, from a Man as Security for the Banker with whom he intruſts the Crown's Money, is good. *Rex* v. *Yale, in Sc. H.* 1719. *Bunb.* 58.]

So every Perſon, who by any Means is chargeable to the King, ſhall be Debtor to the King; for it ſhall be taken *extenſivè:* As, where he is anſwerable to the King for Debt, Damage, Duty, Rent-Arrear, *&c.* *Godb.* 295.

[Land-tax Money in the Hands of the *Collector* is a Debt to the King. *Braſſey* v. *Dawſon*, *T.* 7 *G.* 2. *Str.* 978.]

So, if a Man gives an Obligation to the King, for Performance of Covenants; when thoſe are broken, he is a Debtor to the King. *R.* 7 *Co.* 20. *b.* *Sir Tho. Cecil.*

Or, gives an Obligation to another, which is aſſigned to the King. *Vide Aſſignment*, (D.)

So, if a Man, indebted upon a Judgment in Debt, Treſpaſs, *&c.* acknowledges a Recognizance to the King, without Cauſe, upon Covin to avoid the Impriſonment at the Suit of his Creditors, and to be turned over to the *Fleet*; tho' by the *St.* 1 *R.* 2. 12. he ſhall be remanded to his firſt Priſon, till he has made Gree with his Creditors; yet after ſuch Gree, he ſhall return to the *Fleet*, and there abide till he has ſatisfied his Recognizance confeſſed. 4 *Inſt.* 111.

So, before the *St.* 33 *H.* 8. 39. An Obligation to another, to the Uſe of the King, made the Obligor Debtor to the King.

But now, by that Act, All Obligations or Specialties made to the Uſe of the King or his Heirs, or for any Cauſe touching the King or his Heirs, ſhall be made to the King *Heredibus vel Executoribus ſuis*, and to no other to his Uſe: And if any take or make Obligation, *&c.* otherwiſe, he ſhall ſuffer Impriſonment at the Diſcretion of the King or his Council: And if not contented in the King's Life-time, they ſhall remain and be to the Heirs or Executors of the King at his free Diſpoſition, Aſſignment, or Appointment.

And by the *St.* 7 *Jac.* 15. No Debt ſhall be aſſigned to the King, which was not originally due to his Debtor, or Accountant. *Vide Poſt*, (G. 15.)

By the Courſe of the *Exchequer*, confirmed by the *St.* 8 *&* 9 *W.* 3. 28. A Teller of Receipt in the *Exchequer*, into whoſe Office any Money by way of Loan, Advance, or for Tax, *&c.* ſhall be paid, ſhall without Delay weigh, and enter the Weight and Tale according to the antient Courſe, and throw down a Bill or Bills for the ſame, in Parchment ſigned by himſelf, into the Tally-Court, as ſoon as the Officers be there, whereby a Tally may be levied, *&c.* and the Teller plainly charged.

So Eſtreats [*Extracta*] are made out of *Chancery*, *B. R.* *C. B.* *Iters*, *&c.* of Fines, Amerciaments, *&c.* in thoſe Courts; upon which Summonſes of the *Exchequer* iſſue for levying thoſe Debts. *Mad.* 707, 8.

So, if a Man takes the King's Goods, he is accountable for them to the King. 11 *Co.* 90. *Vide Accompt*, (A. 1.)

So if he takes broken Ordnance, *&c.* by Colour of his Office, as Fees, claiming them to his own Uſe; he ſhall be accountable to the King. 11 *Co.* 90. 2 *Rol.* 161. *l.* 15.

So, if he takes by Colour of a Warrant, for his Fees or Expences, when the Warrant is not lawful. *R.* 11 *Co.* 92. 2 *Rol.* 161. *l.* 20. *Cro. El.* 545.

Or the King may charge him, who made the illegal Warrant, at his Election. 11 *Co.* 92. *b.* 2 *Rol.* 161. *l.* 25.

So, if an Officer has an Obligation to the King, and delivers it to his Servant, to be tranſmitted to him who has the Cuſtody of the Obligations, and the Servant cancels, or embezzles it, his Maſter is liable. *Godb.* 296. *Dy.* 161. 2 *Rol.* 156. *l.* 15.

So, if he pays Money out of the *Exchequer*, without a Grant or Authority under the Great Seal, or Privy Seal, or by Virtue of an Act of Parliament. *By the St.* 8 *&* 9 *W.* 3. 28. *S.* 6.

So, if a Man enters by Wrong, and takes the Profits of the King's Land, he ſhall be accountable for the Profits. 2 *Rol.* 161. *l.* 12. *Vide Accompt*, (A. 1.)

Or takes Goods deviſed to the King before they come to his Hands; for the Law does not put him to his Action of Treſpaſs. 2 *Rol.* 161. *l.* 17.

So, if ſeveral be Joint-Accountants to the King, each ſhall anſwer for the Whole to the King; and not only for ſo much as he has received. *Hard.* 314.

But if a Man receives the King's Money, not knowing it to be ſo, he ſhall not be chargeable: As, if an Officer purchaſes Land, and pays the King's Money

ney in his Hands for it; the Vendor, if he be not conuſant of it, ſhall not be charged for it. *R. Cro. El.* 545.

So an Obligation to the King, if it be not to him, his Executors or Succeſſors, is not within the *St.* 33 *H.* 8. 39. *Mo.* 193.

(G. 2.) By what Means ſatisfied.

(G. 2.) By the Body of the Debtor.

By the *St.* 33 *H.* 8. 39. Obligations, *&c.* concerning the King ſhall be of the ſame Force and Effect as a Statute-Staple.—So, by the *St.* 13 *El.* 4. Debts due by any Accountant, *&c.* *Vide Execution*, (B. 3.)

By Common Law, the Body, Goods, and Lands of a Debtor, or Accountant to the King, were liable for the Debt. 3 *Co.* 12. *b.* 2 *Inſt.* 19. *Godb.* 290. 2 *Rol.* 295.

(G. 3.) By his Goods.

All the Goods and Chattles of the Debtor are liable to ſatisfy the King's Debt. And if his Debtor dies, the King may command the Goods of the Deceaſed to be ſeiſed till Satisfaction. 2 *Rol.* 158. *l.* 41. *Vide the St.* 9 *H.* 3. 18. *Mad.* 663. 665.

And he may take Security of the Executor for Payment, before he be allowed to adminiſter. 2 *Rol.* 158. *l.* 45.

So he may ſeiſe *Bona Eccleſiaſtica*, if the Debtor be a Clerk. 2 *Rol.* 158. *l.* 40.

If the King's Debtor becomes *Felo de ſe*, the Debt ſhall be paid before the Goods be diſpoſed of by the Almoner. *Sav.* 60.

But Things neceſſary *pro Victu* of him and his Family ſhall not be ſeiſed. 2 *Rol.* 160. *l.* 5.

Nor *Averia Carucæ*, if there be other Chattles ſufficient. 2 *Rol.* 160. *l.* 5. And this, by the *St. Art. ſup. Chart.* 12. 2 *Inſt.* 132, 565.

Nor, the Horſes, or Arms of a Knight. 2 *Rol.* 160. *l.* 5.

(G. 4.) Or Lands.

So all the Lands and Tenements of the Debtor are liable to be extended for the King's Debt, which he has, or of which he is ſeiſed. *Godb.* 294, 5. which he has at the Time of the Aſſignment, where the Debt is aſſigned to the King. *Hard.* 24. *Pl. Com.* 321.

Tho' the King afterwards releaſes all his Right to the Terre-tenant; for he is chargeable in reſpect of his Perſon. 2 *Rol.* 160. *l.* 40.

So, a Reverſion, when it comes into Poſſeſſion. *Sav.* 34, 5.

So all the Lands of a Conuſor, *&c.* are chargeable upon a Debt aſſigned to the King; tho' only a Moiety was before. *Sav.* 133.

So, Lands purchaſed by Covin with the King's Money. 2 *Rol.* 160. *l.* 20.

And by the *St.* 13 *El.* 4. If any Accountant, who ſhall receive, or be chargeable with any Money of the Queen, ſhall be found in Arrear, and do not pay in ſix Months, the Queen by Letters Patent may make Sale of ſo much of his Lands as will ſatisfy the Debt. And this Act is intended by the *St.* 14 *El.* 7. to Under-Collectors, *&c.* and by the *St.* 1 *Jac.* 25. made perpetual.

And by the *St.* 27 *El.* 3. The Sale may be after the Death of an Accountant for the Receipt of Money, and if the Account be ſettled within eight Years after his Death, as well as if it was in his Life-time, if the Accountant had not a *Quietus* in his Life-time: Provided no Sale be made during the Nonage of the Heir.

So, Lands in Truſt for him, or of which he has a Power of Revocation, tho' ſettled *bonâ fide*. *R. Godb.* 290. *Hard.* 24. 2 *Rol.* 295, *&c.*

Tho' the Settlement, with Power of Revocation, was made before he become Accountant to the King. *R. Godb.* 290.

(G. 5.) In the Hands of the Heir.

So the King may ſeiſe the Lands of his Debtor, upon his Death.

And may reſort to the Heir, tho' the Executor has Aſſets. *Cont. Dy.* 67. *b. in Marg.*

And by the *St.* 33 *H.* 8. 39. All Lands, *&c.* which come by Deſcent to the Heir, in Fee, or in General or Special Tail, or by Gift of his Anceſtor, ſhall be chargeable for a Debt to the King, by a Judgment, Recognizance, Obligation, or Specialty of his Anceſtor.

And

And tho' the Word, *Heirs*, be not comprized in ſuch Specialty.—Otherwiſe, where an Obligation is aſſigned to the King. *R. Sav.* 2.

And therefore, tho' Lands of the Iſſue in Tail, were not chargeable before, they are now chargeable, as well as Lands which deſcend in Fee, for the Debt of his Anceſtor by Judgment, Recognizance, Obligation, or other Specialty. *R.* 7 *Co.* 21.

So Lands of the Heir, by the Gift of his Anceſtor, before or after the Anceſtor was bound to the King, ſhall be charged. 7 *Co.* 19. *a.*

But Lands are not chargeable in the Hands of the Iſſue in Tail, for a Forfeiture or other Debt to the King, except by Judgment, Recognizance, Obligation, or Specialty. *R.* 7 *Co.* 21. *b.*

Nor, for a Debt to the King by Judgment, *&c.* if the Iſſue aliens *bonâ fide* before Extent or Proceſs againſt him. *R.* 7 *Co.* 21. *b,*

Nor, for a Debt to the King by Judgment, Recognizance, *&c.* if it was originally made to a Subject, and afterwards came to the King by Attainder, Forfeiture, Aſſignment, *&c.* *R.* 7 *Co.* 22. *a.*

So by the *St.* 33 *H.* 8. 39. The King may, at his Liberty, recover his Debt againſt the Executor or Adminiſtrator, if he has Aſſets.

And by *St. M. Ch.* 9 *H.* 3. 8. and by the Proceſs ſince the *St.* 33 *H.* 8. 39. if it appears to the Sheriff, that the Goods of the Debtor are ſufficient for the King's Debt, the Sheriff ought not to extend the Lands. 2 *Inſt.* 14, *Mad.* 667.

[Wherever an *Extent* might have iſſued in a Man's Life, a *Diem clauſit extremum* may iſſue againſt his Eſtate after his Death. *Rex* v. *Miehener*, *M.* 1722. *Bunb.* 118.]

[*Diem clauſit extremum* may iſſue againſt the Eſtate of ſimple Contract Debtor on Commiſſion, tho' he was not the King's Debtor by Record at his Death. *R.* v. *Curtis*, *P.* 23 *G.* 2. *Parker* 95.]

(G. 6.) In the Hands of a Stranger. *Vide Poſt*, (G. 10.)

So, if the Debtor dies without Heir or Executor, Proceſs ſhall go againſt the Terre-tenants. 2 *Rol.* 162. *l.* 15.

So, if the Debtor aliens his Land, and then dies without Heir, Execution ſhall be againſt the Terre-tenants. 2 *Rol.* 156. *l.* 50. *Godb.* 292.

So, if he aliens his Goods, and dies without Executor, Proceſs ſhall be againſt the Poſſeſſors of the Goods. 2 *Rol.* 156. *l. ult.*

If a Lord of a Manor forfeits his Iſſues for not ſerving upon a Jury, they may be levied upon the Lands of the Copyholders, Leſſees for Life, or Years; for it is an inherent Charge upon the Land. 2 *Rol.* 157. *l.* 45. *Vide Poſt*, (G. 10.)

So, if a Debtor to the King aliens his Lands after the Obligation, *&c.* made, or after he becomes an Officer in which Reſpect he is accountable; they are chargeable, for it relates to the Time of the Debt, Office, *&c.* *Vide Poſt*, (G. 9.)

[But Goods pawned or pledged before the Teſte of an Extent are not liable. *R.* v. *Cotton*, *T.* 24 *&* 25 *G.* 2. *Parker* 112.]

So by the *St.* 13 *El.* 4. If any Accountant, or indebted, *&c.* purchaſes Lands in the Name of any other, for his own Uſe or Profit, the ſame ſhall be liable to ſuch Debt, *&c.* in the ſame Manner, as if the Debtor himſelf was ſeiſed, *&c.*

So, if the Debtor takes a Term for Years to him and his Wife, it ſhall be taken in Execution in the Hands of the Wife after the Death of the Huſband. 8 *Co.* 171.

So a Purchaſer of Lands, *&c.* after a Judgment, Obligation, or Specialty to the King, ſhall be charged for the King's Debt. *Sav.* 60.

So, a Purchaſer after Aſſignment, where a Debt is aſſigned to the King.

But if, after a Recognizance to the King, the Conuſor be attainted for Treaſon, a *Scire facias* does nor lie upon the Recognizance againſt the King's Patentee. *Sav.* 60.

By the Courſe of the *Exchequer*, Proceſs does not go againſt a Purchaſer, if the Executor, or Heir, has Aſſets. *Dy.* 67. *b. in Marg.*

And by the *St.* 33 *H.* 8. 49. Lands, *&c.* in the Seiſin or Poſſeſſion of divers, other than the Obligor, ſhall be intirely chargeable, and not ſeverally.

[Poſtmaſter appointed for three Years gives Bond for three Years, at the three Years End he is indebted 9 *l.* afterwards he mortgages an Eſtate, and the Mortgagee has Poſſeſſion on Ejectment; he is continued Poſtmaſter without new

Appointment or Bond, and becomes indebted 72 *l.* His Bond ſhall extend to that, and the Eſtate mortgaged be liable to an Extent. *Williams* v. *Jones*, *M.* 1729. *Bnnb.* 275.]

(G. 7.) By the Goods of a Stranger.

So, upon an Execution for the King's Debt, the Goods of a Stranger *levant* and *couchant* upon the Land of the Debtor, may be taken. 2 *Rol.* 159. *l.* 30.

So, the Cattle of a Stranger which the Debtor ſuffers to manure his Land. 2 *Rol.* 159. *l.* 42.

So, for Rent due to the King, the Goods of a Stranger may be diſtrained. *Godb.* 295.

So a Debt due to the King's Debtor ſhall be extended for the King's Debt. 21 *H.* 7. 12. 16. *Godb.* 291.

Tho' due upon ſimple Contract. *Godb.* 296.

[If on an Extent againſt *A.* the King's Debtor, the Inquiſition finds that *B.* is indebted to him; on Return of Inquiſition, and Affidavit that the Money in *B.*'s Hands is in Danger, an immediate Extent ſhall iſſue againſt *B.* (*Rex* v. *Gibbons*, *T.* 1718. *Bunb.* 24.) even tho' there is Reaſon to ſuppoſe that *A.* became ſo with Intent to ſtrip the Reſt of *B.*'s Creditors. *Rex* v. *Taylor*, *P.* 1723. *Bunb.* 127.]

[Upon an Extent in Aid, Debts without Specialty cannot be found without Motion. *Rex* v. *Packington*, *P.* 1719. *Bunb.* 42]

[Simple Contract Debt may be found and ſeized to the third Degree, but not beyond it. *Ewins Caſe*, *M.* 30. *C.* 2. *Parker* 259.]

[If it be found by Inquiſition againſt a Receiver-general, that he has paid over Money to *A.* an immediate Extent may iſſue againſt *A.* *Rex* v. *Taylor*, *P.* 1723. *Bunb.* 127.]

[So in the Caſe of an Under-treaſurer of the Ordinance. *Rex* v. *Enderupp.* *M.* 1723. *Bunb.* 134. *Bradley* v. *Bowling*, *H.* 1725.]

[An Extent in Aid being Prerogative Proceſs is always under the Care of the Court of Exchequer, and they have a diſcretionary Power over their own Rules. *Per Cur.* *Ibid.*

[Where many ſmall Debts are found on an Inquiſition, on an Extent againſt the King's Debtor, inſtead of ſeparate Extents againſt each ſeparate Debtor, the Court may order a Receiver to collect them, and pay to the Deputy-remembrancer. *Rex* v. *Allen*, *M.* 1730. *Bunb.* 293.]

[Debts to the King's Debtor are not bound till the Teſte of the Inquiſition. *Attorney-General* v. *Elwell*, *T.* 1725. *Bunb.* 199.]

[Debts to the King's Debtor are not bound by the Teſte of the Extent, but only from the Caption of the Inquiſition. *Rex* v. *Green*, *P.* 1729. *Bunb.* 265.]

But the Goods of a Stranger taken for the King's Debt, cannot be ſold as the Goods of the Debtor himſelf may. *Semb.* 2 *Rol.* 159. *l.* 35. *R. Cro. El.* 431.

So, if Land be extended upon a Recognizance to *A.* at 20 *l. per Ann.* which was of the real Value of 60 *l. per Ann.* and the Conuſor is bound by Recognizance to *B.* who is outlawed; the King ſhall not take the Surplus above 20 *l. per Ann.* tho' it be found by Inquiſition that the Land was of ſuch Value. *R. per* 2 *B. Clark cont. Cro. El.* 266.

So, if a Joint-tenant, or Tenant in Common, be a Debtor to the King; the Goods of his Companion cannot be taken, tho' they be *levant* and *couchant* upon the whole Land. 2 *Rol.* 159. *l.* 40. *Vide Poſt*, (G. 10, 15.)

[On Importation and Entry by one Partner only, if by Miſtake the whole Duties are not paid, each of the Partners is liable in the whole Deficiency to the Crown; tho' ten Years afterwards, and five Years after the Importer was Bankrupt. *Attorney-General* v. *Stanyforth*, *H.* 1721. *Bunb.* 97. *Attorney-General* v. *Burgeſs*, *M.* 1726. *Bunb.* 223. *Attorney-General* v. *Carbold*, *H.* 1732. *Ibid.*]

[So in Debt for Nonpayment of Duties. *Attorney-General* v. *Weeks*, *M.* 1726. *Bunb.* 223.]

Nor, the Goods of a Teſtator or Inteſtate, if the Debtor takes the Executrix or Adminiſtratrix to Wife. 2 *Rol.* 159. *l.* 50.

Or, if the Debtor be made Executor to another. *Godb.* 296.

So

So a Woman ſhall not be diſtrained for the King's Debt, in her Dower, if the Heir has ſufficient. *Mad.* 667.

[A Debt due to a Man *Jure uxoris* is conſidered as a Debt originally due to him, within the Meaning of 7 *J.* 1. *c.* 15. *R.* v. *Thornton*, *H.* 7 *Ann. Parker* 271.]

By the *St.* 33 *H.* 8. 39. In all Suits on Specialty to the King, he ſhall recover his Coſts and Damages. *Vide Damages*, (A. 3.)

[If an Officer of the Revenue appoints another to act under him, who being in Arrear applies to the Principal for Money, who pays the whole Debt to the Crown, and takes a Bond for it from the Deputy to himſelf, he ſhall not have an Extent in Aid; tho' generally a Debtor of the Crown ſhall have Crown Proceſs to reimburſe himſelf, tho' the Crown Debt is paid. *Rex* v. *Clarke*, *M.* 1726. *Bunb.* 221.]

[Extent in Aid ſhall not iſſue, but for a Debt originally due to the Crown's Debtor; ſo if *A.* is indebted to *B.* who aſſigns to *C.* before the Extent iſſues againſt *C.* an Extent obtained againſt *A.* ſhall be diſcharged. *Rex* v. *Bowling*, *M.* 1726. *Bunb.* 225.]

[If an Extent finds a Debt due from a Merchant, and it does not appear that this was the Crown's Money; an Extent in Aid ſhall not go. *N. B.* The Affidavit did not go far enough, and was not in the old Form. *Rex* v. *Jans*, *P.* 1731. *Bunb.* 300.

[No *Diem clauſit extremum* can iſſue againſt one who was not Debtor to the King, or *found in his Life-time* to be Debtor to the King's Debtor. *R.* v. *Boon*, *P.* 16 *G.* 2. *Parker* 16.]

(G. 8.) The King ſhall be preferred.

The King by his Prærogative ſhall be preferred before any other Creditor in an Execution for his Debt. 2 *Inſt.* 32. By *M. Ch.* 9 *H.* 3. 18. and the *St.* 33 *H.* 8. 39. *Godb.* 290. *Hard.* 24. *Mad.* 662.

And therefore, if the King's Debtor be ſued in *C. B.* it may be ſuperſeded by a Writ of Privilege, reciting that the King ought to be paid before other Creditors. 2 *Rol.* 159. *l.* 10.

So, if *A.* be taken upon a *Capias*, at the Suit of *B.* and afterwards (before the Return of the *Capias*) a Writ iſſues for the King's Debt, with a *Teſte* before the Taking of *A.* he ſhall be in Execution at the Suit of the King, as well as for *B.* 2 *Rol.* 158. *l.* 25.

So, if the Goods of *A.* and his Lands are ſeiſed by Extent upon a Statute-Staple, at the Suit of *B.* and after the Day of the Return, but before an actual Return, and before a *Liberate*, a Writ iſſues to the Sheriff for the King's Debt, it ſhall be preferred. 2 *Rol.* 158. *l.* 15. *R. Dy.* 67. *b.*

[If Goods are levied by virtue of a *Fieri Facias*, three Days before the *Teſte* of the *Extent*, yet that ſhall be no Bar to the Crown: and if the Sheriff makes that Return on the Extent, the Court will order him to amend it. *Rex* v. *Peck*, *T.* 1716. *in Sc. Bunb.* 8. *(Sed.* Q. if the Goods were ſold.)]

[If a Commiſſion of Bankrupt iſſues, and Aſſignment is made, and the Aſſignees ſeize Part of the Goods on the 31ſt, and an Extent for a Debt to the Crown on Bonds, ſome forfeited, ſome not, iſſues, teſted the ſame Day; the Extent ſhall have the Preference, and the Court will not on Motion order an Account of what was due at that Time. *Rex* v. *Earl*, *H.* 1718. *Bunb.* 33.]

[If a Bankrupt, againſt whom there is an Extent for a Debt to the Crown, has *promiſed* that he will alſo pay a Debt of his Father deceaſed to the Crown; the Aſſignees ſhall pay both Debts, to have the Extent diſcharged. *Rex* v. *Lacy*, *P.* 1734. *Bunb.* 337.]

[Extent againſt the King's Debtor, teſted after a Diſtreſs taken for Rent, with Notice to the Tenant, and Appraiſement made, but before Sale, ſhall prevail againſt the Diſtreſs. *R.* v. *Cotton*, *T.* 24 & 25 *G.* 2. *Parker* 112. 2 *Vezey* 288.]

[But not if the Goods diſtrained had been ſold before the *Teſte*. *Ibid.*]

If

[If Corn is diſtrained for Rent, and Extent iſſues after, but teſted before, it ſhall be preferred, for it binds from the *Teſte*. *Rex* v. *Wynn*, *P.* 1719. *Bunb.* 39.]

[If after Extent Inquiſition and Seizure of Goods, and Defendant's Bankruptcy, other Goods are diſcovered, the Court will quaſh the Extent, *&c.* and grant new Extent of the ſame. *Teſte* with the former. *R.* v. *Buchanan*, *T.* 27 & 28 *G.* 2. *Parker* 176.]

[Or if a ſecond Extent had iſſued after Aſſignment under the Bankruptcy, the Court would quaſh it and grant new Extent of ſame *Teſte*. *R.* v. *Gibſon*, *H.* 17 *G.* 2 *Parker* 35.]

So, by the Common Law, the King's Debtor had Protection, that he ſhould not be ſued by other Creditors until the King's Debt was paid; But now, by the *St.* 25 *Ed.* 3. 19. other Creditors may ſue to Judgment, but Execution ſhall ſtay till Gree for the King' Debt; and then they ſhall have Execution for what is paid to the King, and their own Debt. *Godb.* 290.

But by the *St.* 33 *H.* 8. 39. Suit or Proceſs for the King's Debt ſhall be preferred before other Perſons, ſo always as that the King's Suit be commenced, or Proceſs awarded, before Judgment for the ſaid other Perſons.

And therefore, if Execution be upon a Judgment againſt the King's Debtor, and before a *Venditioni exponas*, an Extent comes at the King's Suit, thoſe Goods cannot be taken upon the Extent. *R.* 3 *Mod.* 236. *R. Hard.* 27.

[Precedent Judgment on Bond ſhall be preferred to the King's; ſubſequent, not. *R.* v. *Dickenſon*, *P.* 4 *W.* & *M.* *Parker* 262.]

[If Executor pleads precedent Judgment and ſubſequent Judgment in one intire Plea, Judgment is againſt him. *Ibid.*]

So the King ſhall not be preferred, where a Debt is aſſigned to him after the Death of the Debtor. *R.* 2 *Rol.* 159. *l.* 15. 1 *Brow.* 37.

So, tho' a Man be in Execution for the King's Debt, he may be charged alſo in Execution at the Suit of a Common Perſon. 2 *Rol.* 158. *l.* 30. *Cro. Car.* 390.

And if he be firſt in Execution for the King's Debt, tho' he may be charged alſo in Execution by a Common Perſon, it does not take Effect till the King's Debt be ſatisfied. *Godb.* 298.

[On a Diſtreſs for Rent made ſix Days before the *Teſte* of an Extent, the Court refuſed an Attachment, tho' the Goods were not ſold. *Rex* v. *Dale*, *P.* 1719. *Bunb.* 42.]

[Simple Contract Debt ſeized into the King's Hands, is to be preferred to Bonds not paid before Seizure; but Payment of Bonds by Adminiſtrator before Seizure or Notice may be pleaded. *R.* v. *Allanſon*, *M.* 3 & 4 *Jac.* 2. *Parker* 260.]

[Immediate Extent finding the ſame Goods ſhall be preferred and paid before former Extents in Aid. Immediate Extents take place according to the *Teſte*. *R.* v. *Quaſh*, *T.* 12 *Ann.* *Parker* 281.]

[And this even if the Goods are ſold, and Return that Sheriff has the Money, but not if delivered. *R.* v. *Bewdage*, *M.* 4 *G.* 1. *Parker* 282.]

(G. 9.) How Execution for the King relates.

[An Extent cannot be antedated. *Rex* v. *Mann*, *P.* 1724. *Rex* v. *Vanderplank*, *T.* 1726. *Bunb.* 164. *Str.* 749.]

If an Execution be ſued upon Land, for the King's Debt, upon an Obligation, *&c.* this being in Nature of a Statute-Staple, the Execution upon it relates to the Time of the Obligation, *&c.* given, and all the Lands which the Party had at that Time ſhall be chargeable. 2 *Rol.* 156. *l.* 25.

Tho' he had aliened them before the Action commenced againſt him. 2 *Rol.* 156. *l.* 25.

So, if a Debt be aſſigned to the King, Execution upon it relates to the Time of the Aſſignment. *Hard.* 24. *R. Sav.* 11.

So by the *St.* 13 *El.* 4. Lands, *&c.* of any accountable, *&c.* ſhall be liable to Payment of a Debt to the Queen, as if he had the Day he firſt became an Officer ſtood bound by a Statute-Staple, *&c.*

And therefore, if an Officer purchaſes Land, and afterwards aliens, or demiſes *bonâ fide* for valuable Conſideration; it ſhall be liable to the King's Debt, tho' the Money, *&c.* for which he is accountable was received ſeveral Years after the Alienation; for the Statute has Relation to the Time when he firſt becomes Officer. *R.* 10 *Co.* 55. *b.*

And by the *St.* 13 *El.* 4. Lands, *&c.* which any Treaſurer or Receiver in the Court of *Exchequer*, Wards and Liveries, or Dutchy of *Lancaſter*, Treaſurer of the Chamber, Cofferer of the Houſehold, Treaſurer of War, or any Fort, *&c.* of the Admiralty, or Navy, Treaſurer, or other Perſon accountable for any Office or Charge in the Mint, Treaſurer or Receiver of Monies impreſt for the Uſe of the Queen, *&c.* Cuſtomer, Farmer, or Collector of Cuſtoms or other Duties in any Port, *&c.* Collector of Tenths or any Subſidy, Receiver General of any County, ſhall have whilſt he remains accountable, *&c.* ſhall be liable.

So, by Common Law, if the King obtains Judgment for a Debt of his Farmer, *&c.* his Land, which he had the Day of the Writ purchaſed, ſhall be liable. 2 *Rol.* 157. *l.* 2. *Vide Execution*, (D. 1, 2.)

If a Plaintiff be amerced *pro falſo Clamore*, it relates to the Day of Pledges found.

But Execution for the King, as to Chattels Real or Perſonal, relates only to the Award of Execution. 2 *Rol.* 157. *l.* 5. *ad* 25.

And therefore, if the Debtor aliens a Term for Years, or other Goods, *bonâ fide*, after the Action commenced, or Judgment given, before Execution awarded, the Sale ſhall be good. 8 *Co.* 171.

(G. 10.) Who are not liable for the King's Debt.

But if Tenant by the Curteſy be Debtor to the King; his Iſſue ſhall not be chargeable, tho' he has the Lands by Deſcent as Heir to his Mother. 2 *Rol.* 157. *l.* 37.

Tho' the Debtor has no other Land. 2 *Rol.* 157. *l.* 40.

If the King grants a Manor in Fee-farm; the Lands or Goods of the Copyholders are not liable for the Rent; for they are elder, being by Preſcription. *R.* 2 *Rol.* 157. *l.* 50.

So, if the King has a Rent by Preſcription, where there is no Uſage to levy it upon them. 2 *Rol.* 157. *l. ult.*

So, if a Joint-tenant be indebted to the King, the Moiety of his Companion ſhall not be charged. 2 *Rol.* 157. *l.* 37.

Nor his Cattle, tho' they go upon the whole Land. 2 *Rol.* 159. *l.* 40.

So, if a Man purchaſes Land to him and his Wife and to the Heirs of the Huſband, for the Jointure of the Wife, having taken an Office, and afterwards becomes indebted to the King, and dies; the Eſtate is not liable during the Life of the Wife. 2 *Rol.* 156. *l.* 30. *Dy.* 225. *a.*

So, if a Settlement be made in the ſame Manner for the Jointure of a Wife, by the Huſband who afterwards had an Office. 2 *Rol.* 156. *l.* 35.

So, if *A.* takes an Office, *&c.* and afterwards makes a Settlement upon a Son or Daughter in Marriage, and becomes indebted to the King, and afterwards takes another Office, in which he is indebted; the Son, *&c.* tho' ſubject to the Arrears of the firſt Office, ſhall not be ſubject to the Money due in the ſecond Office. *R. Mo.* 127.

So, if the King's Debtor conveys to *A*, who conveys to the King, who regrants to *A.* rendring Rent, theſe Lands are not now chargeable; for tho' the Land is chargeable only in reſpect of the Perſon of the Debtor, yet when it comes to the King, it cannot be charged, nor in the Hands of the Grantee of the King againſt his own Grant. 2 *Rol.* 160. *l.* 30.

[Legacies charged on Land ſold, with Notice, to the King's Debtor, ſhall be paid. *Poole* v. *Attorney General*, *H.* 7 *Ann.* *Parker* 272.]

(G. 11.) Suit for the King's Debt.

(G. 11.) In what Court it ſhall be.

By the *St.* 33 *H.* 8. 39. All Suits for Debts or Duties to the King, in the Offices or Courts of the *Exchequer*, Dutchy of *Lancaſter*, Augmentation, Surveyor-General, Maſter of the Wards, or Court of Firſt Fruits and Tenths, ſhall be ſued in ſuch of the ſaid Courts or Offices in which they firſt grew due, or in which the Recognizance, Obligation, or Specialty ſhall remain.

And the ſaid Courts ſhall have full Authority to hear and determine the ſaid Suits, and do Execution on the Body, Lands and Goods of the Party.

(G. 12.) How he ſhall ſue. (*Vide Action*, (B. 1.)— *Prærogative*: (D. 85, 86.)

The King may charge him, who enters into his Lands, as Bailiff or Intruder. *Mo.* 476.

So he may charge him, who takes his Treaſure without Warrant, as a Treſpaſſer, or in Accompt, at his Election. *Mo.* 476.

If the King ſues a perſonal Action, he may lay it in what County he pleaſes, by his Prerogative. 1 *Sid.* 412. 1 *Vent.* 17. *Vide Prærogative*, (D. 85.)

So a *Scire facias* lies againſt an Heir, upon a Suggeſtion of the Death of his Anceſtor, without finding his Death by Office. *R. Sav.* 3.

[A *Diem clauſit extremum* may iſſue for a Simple-contract Debt to the King. *Rex* v. *Curtis*, *T.* 1750, *in Sc.* 1 *Vezey* 483.]

(G. 13.) When the Suit ſhall be barred.

By the *St.* 33 *H.* 8. 39. If any Perſon againſt whom Suit is for Debt or Duty to the King, can ſhew and prove Matter in Law, *&c.* in Bar or Diſcharge of ſuch Debt or Duty, the Court ſhall acquit, *&c.* And this, by the *St.* 5 *R.* 2. 9. without Letter, or Command of the King.

And therefore, to every Suit or Proceſs for the King's Debt, at Common Law or by that Act, the Defendant may alledge in Bar, any Matter for his Diſcharge. 7 *Co.* 19. *b.* *R. Hard.* 502.

As to a *Scire facias* upon an Obligation to the King, againſt the Heir and Terre-tenants, they may plead, by Plea in *Latin*, equitable Matter for their Diſcharge: As, that the Obligation was given upon a Contract for Trees growing upon the Land of a Perſon attainted, which Attainder was after reverſed by Act of Parliament, and the Trees were never felled. *R.* 7 *Co.* 20.

And to a Bill in Equity, any Matter may be alledged or pleaded, which will be a Diſcharge in Law, or Equity. *Hard.* 502.

If the Defendant alledges Matter in Equity for his Diſcharge, and the Attorney-General demurs, it will be ſufficient Proof of the Allegation. *Dub. Lane* 51.

The Defendant ſhall be allowed to defend, by Attorney, by the *St.* 5 *R.* 2. 9. 4 *Inſt.* 110.

And no Accountant ſhall be charged, before he is ſummoned. 4 *Inſt.* 110.

[If an Accountant obtains his *Quietus*, it is pleadable to every Thing prior to it; tho' he continues an Accountant, and becomes indebted to the Crown afterwards. *Rex* v. *Wilkinſon*, *P.* 1732. *Bunb.* 315.]

And he ſhall be allowed Debts due by the King to himſelf. 4 *Inſt.* 110.

After Plea, Goods ſeiſed ſhall be delivered to the Defendant upon Sureties. *Sav.* 3.

But in an Information for Goods, which came to the Hands of *B.* and which he converted to his Uſe, *Not guilty* is no Plea; for it denies the Converſion only, and does not anſwer to the Account, which ought to be ſpecially anſwered. *R.* 2 *Leo.* 34.

[On Bond to export and not reland, Defendant pleaded the Statute of Equity, and that the Goods were taken away by Force; but not allowed. *Attorney-general* v. *Paul*, *in Sc*, *H.* 1718. *Bunb.* 37.]

(G. 14.) How the Trial ſhall be.

By the *St.* 33 *H.* 8. 39. All Trials in Suits, Bills, Informations, *&c.* of Iſſues in the Court of *Exchequer*, ſhall be made by Examination of Witneſſes, Writ-

ings,

ings, Proofs, and ſuch other Means as the Court ſhall think expedient. *Vide* 4 *Inſt.* 110.

Where Iſſue is joined upon a Suit in the Office of Pleas, the Trial ſhall be by a Jury.

And the Trial by a Jury may be at Bar, or by *Niſi prius*.

By the *St.* 5 *R.* 2. 16. Nothing but two Shillings ſhall be paid for the Record and Writ of *Niſi prius*.

After Iſſue upon *Engliſh* Bill, the Trial ſhall be by Examination of Witneſſes in Court, or by Commiſſion, and other Proofs. *Vide Chancery*.

After Iſſue joined in an Information of Intruſion, to be tried by the Country, the King may demand that the Trial be by Record. 4 *Inſt.* 109.

(G. 15.) How the Proceedings ſhall be for a Debt aſſigned to the King.

So, if a Debt be aſſigned to the King, he ſhall have Execution againſt the Body, Lands, and Goods of the Debtor. 4 *Inſt.* 115.

If a Debt upon Obligation be aſſigned, and the Obligor dies, and his Executor is ſued; he ſhall not plead a Judgment to another and no Aſſets *præter* *Hard.* 25.

So, if an Obligation be aſſigned to the King, the Execution ſhall take all the Lands of the Debtor; tho' the Obligee himſelf could have had but a Moiety. *Hard.* 24. *Sav.* 133.

So, if a Man recovers 500 *l.* in an Action on the Caſe againſt *B.* and is afterwards outlawed; the King ſhall take all the Land of *B.* in Execution, tho' the Plaintiff could have had but a Moiety. *R.* 2 *Cro.* 513.

So, if *A.* be indebted to the King, and *B.* be indebted to *A.* the King ſhall have Proceſs againſt *B.* for the Debt due by him to *A.* 8 *H.* 5. 4. *a.* 4 *Inſt.* 111. *Mad.* 666, 668.

So, if *C.* be indebted to *B.* and *D.* be indebted to *C.* the King ſhall have Proceſs againſt *C.* or *D.* and ſo againſt the Debtor of his Debtor *in infinitum*.

So, before a Privy Seal made 12 *Jac.* and after the Death of King *James*, until a Rule made 15 *Car.* 1. the King's Debtor might, by *Engliſh* Bill in the *Exchequer*, have an Extent againſt the Debtor of his Debtor. *Lane* 112. *Hard.* 403, 4.

So, if a Surety, or a Stranger, being diſtrained for the King's Debt, gives an Obligation for Payment; Proceſs ſhall go againſt the Principal Debtor, and if it be recovered, the Obligation ſhall be re-delivered to the Surety. *R. Lane* 91.

But if a Joint-tenant of Goods be indebted to the King, he cannot aſſign all the Goods to the King; but his Part only. *Cro. El.* 265. *Vide Ante*, (G. 7, 10.)

So an Obligation, Recognizance, &c. for Performance of Covenants. to indemnify, or for other Cauſe, except for a Debt, cannot be aſſigned to the King. 4 *Inſt.* 115. *Cont. Ow.* 46. 2 *Leo.* 55.

So, by the *St.* 7 *Jac.* 15. No Debt ſhall be aſſigned to the King, which was not originally due to his Debtor or Accountant.

So a Moiety, or Part of a Debt, cannot be aſſigned to the King. *Ow.* 2, 46.

So, if an Extent in Aid be procured by the King's Debtor, who has ſufficient to anſwer to the King, he ſhall refund with Coſts upon a Bill in Equity. 1 *Ver.* 469.

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